

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1594 of 2025

(Arising out of Order dated 15.08.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Cuttack Bench in IA(IB) No.107/CB/2024 in CP(IB) No. 23/CB/2023.

IN THE MATTER OF:

Shri. Chikali Nagaraju

Member of the Suspended Board of
Directors of Balasore Alloys Limited
R/o 1-118-5, Jaamdevi Peta
Near old starjunction, L Kota
Mandalam, Lakkavarapukota,
Vizianagaram, Andhra Pradesh-535161.

.... Appellant

Vs

M/s Ispat Corp Limited

having its registered office address at:
7th Floor, Nirmal, Nariman Point.
Mumbai- 400021.

.... Respondent.

Present:

For Appellant:

Mr. Krishnendu Datta, Sr. Advocate with Mr. Sandeep S., Mr. Akshat Malpani, Adv. Adnen Ansari and Mr. Sarvesh Dixit, Mr. Harsh Gurbani, Mr. Harshit Chaudhary and Mr. Yash Tandon, Advocates.

For Respondent:

Mr. Ratnanko Banerji, Sr. Advocate with Mr. Prateek Kumar, Mr. Ritvik Kulkarni, Mr. Taha Mirza and Mr. Abhi Udai Singh Gautam, Advocates.

Cont'd.../

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by a Suspended Director of the Corporate Debtor has been filed challenging the order dated 15.08.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Cuttack Bench in IA(IB) No.107/CB/2024 in CP(IB) No. 23/CB/2023 by which order the Adjudicating Authority has allowed IA(IB) No.107/CB/2024 filed by the Financial Creditor – Respondent No.1 herein permitting amendment of date of default in Part IV of Form A of Section 7 application. Aggrieved by the order allowing the application, the Suspended Director has come up in this appeal.

2. Brief facts of the case necessary to be noticed for deciding this appeal are:

- (i) The Corporate Debtor – M/s Balasore Alloys Limited executed a Deed of Indemnity and Guarantee for Inter Corporate Deposit (ICD) on 14.12.2025 by which the Financial Creditor has granted a Short-Term Inter Corporate Deposit for a sum of Rs.10 Crore for 15 days @15% per annum interest. The Deed of Indemnity and Guarantee further contemplated that if the Inter Corporate Deposit is not paid according to its tenor to the Lender, the Corporate Debtor shall pay interest @18% per annum by way of

penalty from time to time from the due date till the date of payment.

- (ii) The Corporate Debtor acknowledged the receipt of Inter Corporate Deposit of Rs.10 Crore having a maturity period of 15 days only with interest calculated @ 15% per annum by letter dated 14.12.2015.
- (iii) The Corporate Debtor did not pay the amount of Rs.10,05,54,795/- on expiry of 15 days as contemplated in the Deed of Indemnity and Guarantee. The Corporate Debtor in acknowledgment of its liability issued a post-dated cheque dated 31.12.2015 payable after three months along with the interest. The Corporate Debtor from time to time issued fresh post-dated cheques along with interest. Original cheques were taken back by the Corporate Debtor and replaced by fresh post-dated cheques. Last post-dated cheques dated 31.12.2019 were issued, which were payable by 31.03.2020.
- (iv) The Financial Creditor wrote to the Corporate Debtor to replace the cheques for the dues payable to the Financial Creditor. The Corporate Debtor informed that there is no signatory to sign the post-dated cheques, hence, the post-dated cheques were not replaced. The Corporate Debtor did not honour its commitment.
- (v) On 28.07.2020, the Financial Creditor issued a letter calling upon the Corporate Debtor to pay an amount of Rs.18,28,49,315/-.

Another notice dated 13.10.2020 was issued calling upon the Corporate Debtor to pay the amount with interest. Third notice dated 12.01.2023 was issued demanding an amount of Rs.22,68,38,356/-. No amount was paid.

- (vi) The Corporate Debtor filed Section 7 application being CP(IB) No. 23/CB/2023 demanding the total defaulted amount of Rs.22,68,38,356/-. In Part IV, date of default was mentioned as 30.03.2020. Section 7 application was replied by the Corporate Debtor.
- (vii) An IA (IB) No.192/CB/2023 was filed by the Financial Creditor to amend the amount of default in Part-IV. Application IA (IB) No.192/CB/2023 was disposed of leaving the issue open to determine it in future at appropriate time.
- (viii) Financial Creditor filed IA(IB) No.107/CB/2024 seeking amendment of date of default in Part IV. The application was listed from time to time. The Adjudicating Authority on 09.05.2025 imposed a cost of Rs.25,000/- on the Financial Creditor to give an opportunity to argue the application. The Financial Creditor paid the cost and thereafter, the application was heard and by the impugned order dated 25.08.2025, the application was allowed permitting the amendment of date of default from 20.03.2020 to 29.12.2015. Aggrieved by the order impugned, this appeal has been filed.

3. We have heard Shri Krishnendu Datta, learned senior counsel appearing for the Appellant and Shri Ratnanko Banerji, learned senior counsel for the Respondent.

4. Learned counsel for the Appellant submits that the date of default was mentioned by the Financial Creditor as 20.03.2020 in Part IV which date fell under the prohibited period under Section 10A. It is submitted that the Financial Creditor in the notice dated 28.07.2020 demanding the payment of Rs.18,28,49,315/- itself requested the entire debt to be paid in 15 days of the receipt of the notice, in which notice it was mentioned that post-dated cheque dated 31.12.2019 was not honoured. Thus, according to own case of the Financial Creditor, the date of default was 20.03.2020. The application was clearly barred under Section 10A and the Financial Creditor could not be allowed to amend the date of default to get away from the bar under Section 10A of the I&B Code. It is true that the Financial Creditor can be permitted to amend his pleadings but the pleading cannot be amended in manner to take away the bar contained to Section 7 application. By permitting amendment of date of default, the entire foundation of Section 7 application is changed, which is not permissible in law. When the Financial Creditor itself came with the case that default occurred on 20.03.2020 when post-dated cheque dated 31.12.2019 was not honoured, there can be no other date of default, as claimed by the Financial Creditor in the amendment application. The Adjudicating Authority committed error in permitting changing of the date of default which has completely changed the entire proceeding. The Financial

Creditor cannot be allowed to approbate and reprobate. Inconsistent and contradictory pleadings have been made in Section 7 application. The Financial Creditor at one hand sought amendment of date of default as 29.12.2015 and on the other hand prayed for alternatively changing the dated to 20.01.2023. Inconsistent and contradictory pleadings cannot be permitted.

5. Shri Ratnanko Banerji, learned senior counsel for the Respondent refuting the submissions of the learned counsel for the Appellant submits that material which were brought on the record in the Section 7 application itself clearly pleaded that default was committed when the Corporate Debtor failed to honour the Deed of Indemnity and Guarantee within 15 days to pay Rs.10 Crore amount. The ICD was only for 15 days and default occurred after expiry of 15 days when no payment was made. Subsequently, giving of post-dated cheques by the Corporate Debtor from time to time also contained acknowledgment of default. The post-date cheque included amount of penalty @18% which was leviable only on default by the Corporate Debtor. The default, thus, was committed on 29.12.2015 and the Corporate Debtor from time to time gave post-dated cheques, the last post-dated cheque given was dated 31.12.2019 payable on 30.03.2020, which was not replaced, therefore, the notice of demand dated 28.07.2020, 31.10.2020 and 13.01.2023 were issued by the Financial Creditor. Demand notice did not create a date of default rather it confirmed the default committed by the Corporate Debtor and only crystalized the amount which was payable by the Corporate Debtor. Last

post-date cheques being not replaced, which were payable on 30.03.2020, 30.03.2020 was mentioned as date of default in the Section 7 application. Amendment was sought to correct the date of default to 29.12.2015, which date of default was already on the record by very material brought by the Financial Creditor. Present is a case of not changing the date of default which is in 10A period rather default in the present case is prior to 10A period, hence, there was no impermissibility in allowing the amendment application. Present is not a case of withdrawing any admission by the Financial Creditor rather all relevant notices were pleaded with all relevant documents in the Section 7 application.

6. Learned counsel for both the parties have placed reliance on various judgments of this Tribunal and Hon'ble Supreme Court which we shall refer to in detail while considering the submissions in detail.

7. Before we enter into the respective submissions of either of the parties, we need to capture the real nature of the transaction between the parties and sequence of events which have been captured in the Section 7 application filed by the Financial Creditor. It is admitted fact between the parties that Deed of Indemnity and Guarantee for Inter Corporate Deposit was executed by the Corporate Debtor on 14.12.2015 for a Short Term Inter Corporate Deposit of Rs.10 Crore for a period of 15 days @15% per annum interest. The copy of the Deed of Indemnity and Guarantee was part of the Section 7 application, which was filed as Annexure 3 to the Application, as

pleaded in Part IV of the Section 7 application. It is useful to notice the entire Deed of Indemnity and Guarantee, which is as follows:

"This Deed of Indemnity and Guarantee for Inter Corporate Deposit is executed on this 14th day of December 2015 by M/S Balasore Alloys Limited, a Company incorporated under the Companies Act, 1956 having its Registered Office at Balgopalpur, Balasore, Orissa 756020 which expression shall unless repugnant to the context mean and include its successors and assignees (herein after referred to as "Borrower")

IN FAVOUR OF ISPAT CORP PRIVATE LIMITED. a Company incorporated under the Companies Act. 1956 and having its Registered Office at Nirmal. 7th Floor, Nariman Point. Mumbai-400021 which expression shall unless repugnant to the context mean and include its successors and assignees (herein after referred to as "Lender")

WHEREAS THE Borrower has approached the Lender for a short term ICD for a sum of Rs. 10,00,00,000/- (Rupees Ten Crores only) for a period of 15 days, at the rate of 15% p.a. interest in Indian currency

AND WHEREAS

THE Lender at the request of Borrower had sanctioned a sum of Rs. 10,00,00,000/- (Rupees Ten Crores only) as Inter corporate deposit for a period of 15 days, at the rate of 15% p.a. interest in Indian currency.

Now in consideration of the borrower providing ICD to the extent of Rs. 10 crores, the Borrower do hereby so as to bind itself and its successors and assigns irrevocably and unconditionally agree and undertake:

- (a) To handover 10 cheques of Rs. 1,00,00,000 each to the Lender, the details of which are annexed and forming part of this agreement*
- (b) to indemnify Lender and keep Lender harmless and indemnified at all times, against all losses, damages, action, costs charges or expenses which may be made against or sustained or incurred by Lender consequence of the Lender having at the request of the borrower sanctioning as a result of or in the Inter corporate deposit.*
- (c) that the said Inter corporate deposit disbursed by Lender will be promptly paid by the borrower thereof together with interest, costs, charges and expenses due thereon wherever applicable.*
- (d) on default in payment by the borrower to pay to make good to lender on demand all losses, costs, charges and expenses occasioned to lender by reason of nonpayment of the amount of the said Inter corporate deposit, breach or non-performance or non-observance of the obligations on the part of the borrower of the said Inter corporate deposit*
- (e) that if the said Inter corporate deposit is not paid accordingly to its tenor, to pay Lender interest at*

the rate of 18% p.a by way of penalty from time to time from the due date till the date of payment.

(f) not to hold Lender responsible or liable for any loss or damage which borrower may suffer as a result of any act or omission or negligence on the part of any of the correspondents or agents appointed by Lender for the purpose of collection of the amounts of the said Inter corporate deposit or otherwise howsoever.”

8. It is relevant to notice that in the Deed of Indemnity and Guarantee there was Annexure A, which included payment of interest. Total amount mentioned in Annexure A is Rs.10,05,54,795/-. Thus ICD became payable after 15 days @15% p.a. interest on 29.12.2015. The letter issued by the Corporate Debtor on 14.12.2015 in the above reference has been pleaded and filed as Annexure 4 to the Part IV, which letter dated 14.12.2015 is as follows:

“Date: 14th December, 2015

To

*Ispat Corp Private Limited,
Nirmal, 7th Floor,
Nariman Point.
Mumbai-400021*

Dear Sir.

We sincerely thank you for the sanction of Inter corporate deposit for an amount of Rs. 10.00.00.000/- (Rupees Ten Crore only) having a maturity period of 15 days with interest calculated @15% per annum.

Thanking you.

*Yours faithfully.
For Balasore Alloys Ltd*

Director (Finance)”

9. The Corporate Debtor thus, clearly acknowledged that the maturity period of ICD is 15 days. Admittedly, on maturity, i.e. on 29.12.2015 no payment was made rather the Corporate Debtor issued post-dated cheques. The correspondence between the parties with respect to issuance of post-dated cheques from time to time and relevant emails are part of Section 7 application and have also been clearly pleaded in Part IV. In Part IV, from Para (ix) a to z, aa, bb, cc, details of post-dated cheques issued from time to time have been captured. In sub-para (x) and (xi) following has been pleaded:

“(x) Pursuant to the above correspondence, the Corporate Debtor informed the Financial Creditor of the Corporate Debtor's inability to honour the cheques dated 31st December, 2019, the Financial Creditor made various efforts in communicating with the Corporate Debtor regarding the non-payment of the amount due to the Financial Creditor in pursuance to the ICD.

(xi) The Corporate Debtor, from time to time, issued new post-dated cheques and, on each occasion, prior to the realization of the post-dated cheques, extended the time period by three months whilst promising to pay the amount due and payable to the Financial Creditor. Hence, on every occasion, old cheques were replaced

with new cheques by the Corporate Debtor, until 30th March, 2020, when the Corporate Debtor failed to reissue fresh cheques as per the understanding between the Financial Creditor and the Corporate Debtor.”

10. In sub-para (xiii) reference of notice dated 28.07.2020 has been made, which is as follows:

“(xiii) Thereafter, the Financial Creditor issued another Demand Notice dated 13th October, 2020, to the Corporate Debtor once again, calling upon the Corporate Debtor to pay the amount of Rs. 18,66,46,575/- (Rupees Eighteen Crore Sixty-six Lakhs Forty-Six Thousand Five Hundred and Seventy-Five Only) at the rate of interest of 18% per annum to be calculated from 7th October, 2020. The Financial Creditor in the said Demand Notice inter alia stated that, it was the Corporate Debtor's intention from the very outset to cheat the Financial Creditor and that the Corporate Debtor had made false and fraudulent representations to the Financial Creditor. The Corporate Debtor was also called upon to pay the entire amount due within the seven days of receipt of the said Demand Notice, failing which, the Financial Creditor would be bound to take legal action civil/ criminal proceedings and would be compelled to initiate proceedings in the National Company Law Tribunal ("NCLT") against the Corporate Debtor in accordance with law, as to its own risk and cost and consequences. The Financial Creditor also called upon the Corporate Debtor to resolve the matter amicably. A

copy of the said Demand Notice dated 13th October, 2020 is annexed hereto as "Annexure XXXIII".

11. The post-dated cheques issued from time to time have been pleaded in Part IV of the Section 7 application and the correspondence between the parties, which is supported by contemporaneous emails are also part of the Section 7 application. We may refer to one email dated 27.09.2019, which was written to the Corporate Debtor on behalf of the Financial Creditor which refer to the cheques dated 30.06.2019, which was due on 30.09.2019. The email mentions the amount of Rs.14,78,97,277/-, which is proof of the pleading that the amount due was calculated by adding the interest payable on the ICD. The Corporate Debtor was informed to confirm the replacement of post-dated cheques, otherwise the Financial Creditor will deposit the same. The Corporate Debtor replaced the cheques by issuing fresh post-dated cheques. Last fresh cheques were issued dated 31.12.2019 which were payable on 30.03.2020 and there is correspondence on record regarding cheques issued on 31.12.2019. Cheques were not replaced after 30.03.2020, thereafter, notice dated 28.07.2020 was issued by the Financial Creditor. The submission of learned counsel for the Appellant is that the notice dated 28.07.2020 itself required entire debt to be paid within 15 days of receipt of the notice, hence, the default occurred only after 15 days' after receipt of the notice dated 28.07.2020, which is within 10A period. Notice dated 28.07.2020 is also part of the Section 7 application. The notice captures the transaction between the parties and has clearly pleaded that the Corporate Debtor

dishonoured and breached the promise and failed to pay the interest on Inter Corporate Deposit. The request of the Corporate Debtor to give post-dated cheques was accepted by the Financial Creditor and post-dated cheques were taken. It is relevant to notice Para 4 to 8 of the notice:

“4. Our Clients state that you the Noticee, in furtherance of Inter Corporate Deposit (ICD) entered upon a deed of indemnity and Guarantee dated 14th December, 2015 in favour of Our Clients. Furthermore, you the Noticee, also executed a receipt and a promissory note dated 14th December, 2015 admitting legal liability and promise to pay Rs. 10,00,00,000/- (Rupees Ten Crore Only) on maturity of 15 days, at the rate of 15% per annum.

5. Our Clients state that you the Noticee, however, dishonoured and committed breach of the said promise and asked our Clients for extension of time for repayment of same with the interest of 18% per annum till its realization. Our Clients state that as per deed of indemnity and Guarantee dated 14th December, 2015, if the borrower (i.e. you the Noticee) fails to pay the Inter Corporate Deposit of Rs. 10, 00, 00, 000/- (Rupee Ten Crore Only) according to its tenor then the borrower (i.e. you the Noticee) will be liable to pay 18% interest per annum as a way of penalty to the Lender (i.e. Our Clients) till its realization.

6. Our Clients state that relying upon the promise made by you the Noticee, in good faith our Clients accepted your request and therefore, you the Noticee duly acknowledging the debt payable by you the Noticee to

our Client issued fresh post-dated cheques (PDC) for the above debt and payment along with the interest as mentioned above.

7. Our Clients further state that you the Noticee, after acknowledging and promising to pay said amount wrongfully denied to pay the amount on due date when the cheques were due for presentation for its actual realization. Thereafter, you the Noticee, started making different excuses and again promised to pay said amount by issuing fresh post-dated cheques (PDC) in acknowledgement of the debt owed, outstanding and payable by you the Noticee to our Clients. Our Clients further state that you the Noticee, on every occasion of due date for realization of the cheques extended the time line by 3 months and issued the fresh post-dated cheques (PDC) for repayment of the above debt amount by duly acknowledging your liability towards our Clients.

8. Our Clients state that you the Noticee, in the month of October, 2019 issued fresh post-dated cheques (PDC) dated 31.12.2019 for repayment of the above Inter corporate deposit which got extended and acknowledged from time to time. Our Clients were utterly shocked and surprised to hear from you the Noticee, that the cheques issued by you cannot be honoured for the reasons best known to you.”

12. The above clearly indicate that it was pleaded that the ICD was not paid on maturing after 15 days and the Corporate Debtor committed dishonour of its promise and breach of promise, which are pleaded in the

above notice. Para 10 captures the details of outstanding payment on the Corporate Debtor. It is useful to notice Para 10 of the notice:

“10. Our Clients state that you the Noticee are liable to pay the principal amount of Rs. 10,00,00,000/- (Rupees Ten Crore Only) along with the interest as mentioned below:

<i>Sr. No.</i>	<i>Period</i>	<i>Time</i>	<i>Interest @ 18%per annum</i>
1.	14.12.2015 To 31.03.2016	108 days	5326027
2.	01.04.2016 To 31.03.2017	1 year	18000000
3.	01.04.2017 To 31.03.2018	1 year	18000000
4.	01.04.2018 To 31.03.2019	1 year	18000000
5.	01.04.2019 To 31.03.2020	1 year	18000000
6.	01.04.2020 To 21.07.2020	112 days	5523288
<i>Interest Total</i>			<i>8,28,49,315/-</i>
<i>Principal</i>			<i>10,00,00,000/-</i>
<i>Grant Total</i>			<i>18,28,49,315/-</i>

13. When we look into the above table, it is clear that the amount is calculated with interest @ 18%, which is penal interest to be charged on default of the Corporate Debtor. The interest upto 31.03.2016 and thereafter, each year, in the statement, interest has been calculated imposing penal interest @18% itself clearly indicate that penal interest is charged on default committed. When interest is charged @18% for period upto 31.03.2016 of Rs.53,26,027/-, as is reflected in the above table, default was clearly pleaded.

14. The submission of the Appellant is that since first notice issued on 28.07.2020 and the Corporate Debtor was asked to pay amount within 15 days after receipt of the notice, the default for the first time arose within Section 10A period and subsequent notice dated 13.10.2020 was also within 10A period. We have already noticed the details of the notice. The mere fact that total amount defaulted was demanded within 15 days cannot mean that default committed by the Corporate Debtor only for failure to deposit the amount within 15 days. The notice captures details of default made by the Corporate Debtor, reflecting demands from 14.12.2015 and the notice also calculated the total default which mentioned amount of Rs.18,28,49,315/- which included interest and principal. In the above case, we need to refer to three judge bench judgment of this Tribunal in **“Sandip Narendrakumar Patel (Promotor/ExDirector) Yours Ethnic Foods Pvt. Ltd. vs. Svakarma Finance Pvt. Ltd. & Anr., Company Appeal (AT) (Ins.) No.1419 of 2023 decided on 05.11.2024”**. Above was a case of loan payable with 14% interest. Loan was sanctioned on 18.07.2019 and agreement was executed on 25.07.2019. Loan was repayable within period of three years starting from 20.08.2019. In the above case also date of default was mentioned as 20.02.2020 in the Section 7 application and recall notice dated 06.11.2020 granted period of 15 days for depositing amount, issue was raised that application is barred by 10A. The Adjudicating Authority admitted the application. The argument was raised that date of default on 20.02.2020 cannot be accepted since notice was issued only on 06.11.2020 which required payment within 15 days,

hence, default occurred only on 21.11.2020, within 10A period. The above argument was noticed and rejected by this Tribunal and in Para 28 of the judgment following was held:

“28. As we have already mentioned that the loan was advanced by the FC to the CD in two tranches, based on the agreement to which both the parties were bound, Clause 5.1.1 of the agreement deals with the dues to be repaid by the CD in which schedule 1 of the agreement states that due date shall be as per the repayment schedule and schedule 2 and repayment schedule in schedule 2 reproduced hereinabove, clearly shows the due date of the amount of instalment etc. There is no dispute that the amount of instalment was to be paid on monthly basis. The CD did not pay the monthly instalment from Jan, 2020 which was due to be paid on 20th Jan, 2020 rather it was paid in month of Feb, 2020 but without the penal interest, therefore, the entire amount due was not paid. It is also not in dispute that the monthly instalment of Feb, 2020 which fell due on 20.02.2020 was not paid at all, therefore, the CD had committed the default in not paying the instalment alongwith penal interest in Jan, 2020 and no instalment at all of the month of Feb, 2020 and thereafter did not pay the instalments which means that the default had occurred either in the month of Jan, 2020 or at the most in the month of Feb, 2020, therefore, the FC has taken the date of default as 20.02.2020 in column 2 Part IV of Form 1 of the Application filed under Section 7 of the Code. The CD cannot be permitted to take advantage of the fact that the FC had issued a notice of recall dated 06.11.2020,

giving 15 days' time, to the CD to pay the same and to calculate the date of default as 21.11.2020 which falls within the cut off period of Section 10A because issuance of recall notice, in pursuance of the clause 10.3 of the agreement, was on the occurrence of any of the events of default, which had already occurred in the month of January or at the most February. It does not mean that the default has occurred with the issuance of recall notice as the notice was a consequence of the occurrence of default and it was a procedural step for recalling of the entire loan amount. In such circumstances, the argument raised by the Appellant has no legs to stand because the default had occurred in the month of Jan, 2020 partly when the amount of penal interest was not paid and fully when the entire amount was not paid in Feb, 2020. Section 10 A postulates that the CIRP cannot be initiated either under Section 7, 9 or 10 if the default occurs during the cut of period i.e. 25.03.2020 to 25.03.2021. In the present case, Section 10A would not apply because the date of default occurred much prior to 25.03.2020.”

15. In the above judgment, this Tribunal held that the issuance of recall notice dated 06.11.2020 giving the Corporate Debtor 15 days' time to pay the amount does not mean that default has been occurred with issuance of default/recall notice. This Tribunal held that notice was confirmation of default and it was a procedural step for recalling of the entire loan amount. In view of the above judgment of this Tribunal, we are unable to accept the submission of the Appellant that default can only be treated to be first occurred when demand notice dated 28.07.2020 was issued by the

Financial Creditor granting time to the Corporate Debtor to pay within 15 days.

16. The submission which has been much pressed by learned counsel for the Appellant is that the Adjudicating Authority cannot allow the amendment in Part IV, which has effect of taking away an admission made in the pleadings. Learned counsel for the Appellant has placed much reliance on the judgment of Hon'ble Supreme Court in **“(2015) 10 SCC 203, Ram Niranjan Kajaria vs Sheo Prakash Kajaria & Ors.”** In the above case, the Hon'ble Supreme Court while considering the provision of Order 6 Rule 17 of the CPC held that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment. The Hon'ble Supreme Court, however, held that the admission can be clarified or explained by way of amendment. Hon'ble Supreme Court in the above case in Para 23 and 24 laid down following:

“23. We agree with the position in Nagindas Ramdas and as endorsed in Gautam Sarup that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment. To that extent, the proposition of law that even an admission can be withdrawn, as held in Panchdeg Narain Srivastava³, does not reflect the correct legal position and it is overruled.

24. However, the admission can be clarified or explained by way of amendment and the basis of

admission can be attacked in substantive proceedings. In this context, we are also mindful of the averment in the application for amendment that:

“11.... Mahabir Prasad Kajaria died at the age of 24 years on 7-5-1949 when Defendant 5 was only 2 years and Defendant 12 was only 21 years. Till the death of Mahabir and even thereafter, the petitioners had been getting benefits from income of the joint properties. Defendant 5 and his two sisters, namely, Kusum and Bina were brought up and were maintained from the income of the joint family properties. The petitioners after the death of Mahabir, they continued to live in the joint family as members and till now as members of the joint family. In the marriage of the two sisters of Defendant 5 Kusum and Bina (now after marriage Smt Kusum Tulsian and Smt Bina Tulsian) the expenses were wholly borne out from the incomes of the joint family properties. The said facts are well known to all the family members and their relations.”

17. The present is a case where all relevant facts including the fact that ICD was only for 15 days and payable after 15 days with interest were pleaded in the Section 7 application. The Section 7 application clearly pleaded that the post-dated cheques were given from time to time by the Corporate Debtor acknowledging its liability, which post-dated cheques included payment of principal amount along with interest. Present is not a case where Financial Creditor for the first time has pleaded about default which took place in non-payment within 15 days of the ICD, as was the indemnity given by the Corporate Debtor. The Financial Creditor has given date of 20.03.2020 as date of default in the Part IV initially since on the said date the last replaced post-dated cheques were to be honoured and the Corporate Debtor failed to renew the post-dated cheques, which was

being done earlier at every three months. The judgment of Hon'ble Supreme Court in **"Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd., (2021) 3 SCC 224"** has been relied and referred to where the Hon'ble Supreme Court had occasion to consider Section 10A of the I&B Code which clearly held that no application for initiation of CIRP can be filed for a default which is committed within 10A period. In Para 24 and 25 following was laid down:

"24. The substantive part of Section 10-A adverts to an application for the initiation of the CIRP. It stipulates that for any default arising on or after 25-3-2020, no application for initiating the CIRP of a corporate debtor shall be filed for a period of six months or such further period not exceeding one year "from such date" as may be notified in this behalf. The expression "from such date" is evidently intended to refer to 25-3-2020 so that for a period of six months (extendable to one year by notification) no application for the initiation of the CIRP can be filed. The submission of the appellant is that the expression "shall be filed" is indicative of a legislative intent to make the provision prospective so as to apply only to those applications which were filed after 5-6-2020 when the provision was inserted. Such a construction cannot be accepted.

25. The date of 25-3-2020 has consciously been provided by the legislature in the recitals to the Ordinance and Section 10-A, since it coincides with the date on which the national lockdown was declared in India due to the onset of the COVID-19 Pandemic. In Sardar Inder Singh v. State of Rajasthan [Sardar

Inder Singh v. State of Rajasthan, 1957 SCR 605 : AIR 1957 SC 510] , the Rajpramukh promulgated the Rajasthan (Protection of Tenants) Ordinance (9 of 1949) on 21-6-1949 which, inter alia, provided for the reinstatement of tenants who had been in occupation on 1-4-1948 but had been subsequently dispossessed. When it was challenged before the Supreme Court, the Constitution Bench, speaking through T.L. Venkatarama Ayyar, J. relied on the recital in its Preamble [“Whereas with a view to putting a check on the growing tendency of landholders to eject or dispossess tenants from their holdings, and in the wider national interest of increasing the production of foodgrains, it is expedient to make provisions for the protection of tenants in Rajasthan from ejectment or dispossession from their holdings.”] while interpreting its provisions. The Court held that : (AIR pp. 516-17, paras 11 & 13-14)

“11. In the present case, the Preamble to the Ordinance clearly recites the state of facts which necessitated the enactment of the law in question, and Section 3 fixed the duration of the Act as two years, on an understanding of the situation as it then existed. At the same time, it conferred a power on the Rajpramukh to extend the life of the Ordinance beyond that period, if the state of affairs then should require it. When such extension is decided by the Rajpramukh and notified, the law that will operate is the law which was enacted by the legislative authority in respect of “place, person, laws, powers”, and it is clearly conditional and not delegated legislation as laid down in *R. v. Burah* [*R. v. Burah*, 1878 SCC OnLine PC 17 : (1877-78) 5 IA 178] , IA at pp. 180, 194, 195 and must, in consequence, be held to be valid. ...

13. (4) We shall next consider the contention that the provisions of the Ordinance are repugnant to Article 14 of the Constitution, and that it must therefore be held to have become void. In the argument before us, the attack was mainly directed against Sections 7(1) and 15 of the Ordinance. The contention with reference to Section 7(1) is that under that section landlords who had tenants on their lands on 1-4-1948, were subjected to various restrictions in the enjoyment of their rights as owners, while other landlords were free from similar restrictions. There is no substance in this contention. The Preamble to the Ordinance recites that there was a growing tendency on the part of the landholders to eject tenants, and that it was therefore expedient to enact a law for giving them protection; and for granting relief to them, the legislature had necessarily to decide from what date the law should be given operation, and it decided that it should be from 1-4-1948. That is a matter exclusively for the legislature to determine, and the propriety of that determination is not open to question in courts. We should add that the petitioners sought to dispute the correctness of the recitals in the Preamble. This they clearly cannot do. Vide the observations of Holmes, J. in *Block v. Hirsh* [*Block v. Hirsh*, 1921 SCC OnLine US SC 109 : 65 L Ed 865 : 256 US 135 (1921)] .

14. A more substantial contention is the one based on Section 15, which authorises the Government to exempt any person or class of persons from the operation of the Act. It is argued that that section does not lay down the principles on which exemption could be granted, and that the decision of the matter is left to the unfettered and uncanalised discretion of the Government, and is therefore repugnant to Article 14. It is true that that section does not itself indicate the grounds on which exemption could be granted, but the Preamble to the Ordinance sets out with sufficient clearness the policy of the legislature; and as that governs Section 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided.”

(emphasis supplied)”

18. There can be no dispute to the proposition laid down in the above case by the Hon’ble Supreme Court that no proceeding for insolvency for a default which is occurred between 10A period can be initiated. The present is a case where the Financial Creditor has filed an application for amendment of date of default as mentioned in Part IV from 20.03.2020 to 29.12.2015. The change of date has been allowed by the Adjudicating Authority relying on the pleadings and material on record. The Adjudicating Authority has also taken note of the pleadings of the Financial Creditor that in the financial statement of the Corporate Debtor from FY 2015-16 to FY 2022-23 the Corporate Debtor has acknowledged the debt.

19. Learned counsel for the Respondent has placed reliance on the judgment of this Tribunal in **“Puneet P. Bhatia vs. ASREC (India) Ltd. & Anr., Company Appeal (AT) (Ins.) No.139 of 2024”**, where this Tribunal had occasion to consider challenge to an order passed under Section 7 of the I&B Code. In the Section 7 application the date of default was mentioned as 31.10.2020 and the date of default was subsequently permitted to be amended as 02.08.2019; Section 7 application was admitted, challenge to which was made in the appeal before this Tribunal. This Tribunal in the above case framed two issues which have been captured in Para 28, which are as follows:

“28. There are two issues involved for the determination in the present appeal: -

- a) *Whether the Date of Default can be changed after filing the petition under Section 7 of the Code?*
- b) *Whether in the present case the date of default has been correctly identified?*

We examine both these issues in detail in subsequent paras.”

20. This Tribunal after considering submissions of the parties came to the conclusion that NCLT is empowered to allow the parties to amend the pleadings. In Para 45 following was laid down:

“45. Section 10A of the IBC was introduced to provide relief to businesses affected by the economic impact of the COVID-19 pandemic by precluding insolvency proceedings for defaults occurring between 25.03.2020 and 25.03.2021. The appellant's reliance on Section 10A is premised on the initial default date of 31.10.2020, which falls within this protected period. However, the respondent's assertion of a default on 02.08.2019 predates the moratorium period, rendering Section 10A inapplicable. The appellant has failed to provide evidence that directly links the default to the impact of the pandemic. The mere fact that restructuring occurred in March 2020 does not, in itself, establish that the default arose during the Section 10A period. Consequently, the appellant's reliance on precedents such as Plus Corporate Ventures Pvt. Ltd. v. Transnational Growth Fund Ltd. is misplaced, as these cases involved defaults unequivocally occurring within the protected period.”

21. The Hon'ble Supreme Court in **“Dena Bank (Now Bank of Baroda) vs. C. Shivakumar Reddy & Anr., (2021) 10 SCC 330”** had occasion to consider challenge to an order by which order passed by the NCLT admitting Section 7 application was set aside. In the above judgment the Hon'ble Supreme Court held that there is no bar in law to amend a pleading in Section 7 application or for filing additional document. In Para 142 of the judgment, the Hon'ble Supreme Court laid down following:

“142. There is no bar in law to the amendment of pleadings in an application under Section 7 IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 IBC in Form 1. In the absence of any express provision which either prohibits or sets a time-limit for filing of additional documents, it cannot be said that the adjudicating authority committed any illegality or error in permitting the appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the adjudicating authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the adjudicating authority to entertain and/or to allow the request of the appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal.”

22. The pleadings in the present case indicate that the Corporate Debtor has given post-dated cheques continuously from 29.12.2015 till last cheque issued on 31.12.2019, which cheques included amount of principal of Rs.10 Crore plus interest. The issuance of post-dated cheques by the Corporate Debtor is clear acknowledgement of debt. We may refer to the judgment of Hon'ble Supreme Court in **"Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458"** where in Para 17 following was observed:

"17. In Rangappa v. Sri Mohan, this Court held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises)."

23. Learned counsel for the Respondent has also relied on Division Bench judgment of Kerala High Court in **"Dr. K. K. Ramakrishnan vs. Dr. K. K. Parthasaradhy & Anr., 2003 SCC OnLine Ker 420"** where the Division Bench answered the two questions referred to the Division Bench in following manner:

"In view of the above, the question as posed at the outset is answered in the negative. It is held that:

(1) When a person issues a cheque, he acknowledges his liability to pay. In the event of the cheque being dishonoured on account of insufficiency of funds he will not be entitled to claim that the debt had become barred by limitation and that the liability was not thus legally enforceable. He would be liable for penalty in case the charge is proved against him.

(2) The view taken by this court in Joseph's case (2000) 3 KLT 533 cannot be sustained as laying down the correct principle of law. It is consequently overruled.

In view of the above, the revision petition is dismissed. It is further directed that out of the amount of Rs. 1,50,000 which had been deposited by the petitioner, Rs. 75,000 shall be paid to the respondent-complainant within one week from the presentation of a copy of this order.”

24. Post-dated cheques with added interest from time to time by the Corporate Debtor is clearly acknowledged of its liability to pay and when the cheques contains the amount of penalty interest, which penalty interest was leviable only on failure of Corporate Debtor to pay amount in time, the default has already occurred.

25. In the facts of the present case, the ICD was only for 15 days, after 15 days the amount of Rs.10 Crore advanced on 14.12.2015 was to be paid with interest of Rs.5,54,795/- on 29.12.2015 and when payment was not made, default occurred on that day. Thereafter, continuous giving of post-dated cheques by adding the interest accrued from time to time is also acknowledgement of debt and continuance of default.

26. Learned counsel for the Appellant has also relied on judgment of this Tribunal in **“Inakshi Sobti and Ors. vs. Starlight Systems (I) Pvt. Ltd. & Anr., Company Appeal (AT) (Ins.) No. 359 of 2024, decided on 03.07.2024”** where the order of the Adjudicating Authority rejecting the application for amendment in Section 7 application was upheld. In the

above case also the Section 7 application mentioned the date of default as 05.09.2020, which was sought to be amended as 01.04.2021. This Tribunal dismissing the appeal upheld the order rejecting amendment. This Tribunal has also referred to Section 10A and in Para 17 of the judgment this Tribunal laid down following:

17. The above judgment of the Hon'ble Supreme Court itself has laid down that categorical admission cannot be resiled but in a given case, it may be explained or clarified. The present is not a case where any clarification or explanation is sought to be offered for date of default 05.09.2020 mentioned in Section 7 application. The date of default in itself is sought to be changed as 01.04.2021 without there being any reason or cause. As noted above, Appellant themselves has stated that after registration of society of the appellant on 04.09.2020, the corporate debtor was liable to refund the amount to the appellants which default took place on 05.09.2020. In the application as pleaded that they entered into informal talks with the corporate debtor which did not fructify. Appellant themselves has stated that in the formal talks proceeded to take time till financial year of the corporate debtor. Firstly, according to the case of the appellant, informal talk did not fructify, hence, there was no settlement with regard to date up to which amount has been paid. Date of default cannot be permitted to be changed. Appellants themselves cannot change the date of default by stating that they give more time to the corporate debtor. When the default has been committed by the corporate debtor all

consequences shall ensue. Counsel for the appellant has also relied another judgment of the Hon'ble Supreme Court in **“Ram Niranjan Kajaria and Ors. vs. Sheo Prakash Kajaria and Ors.- (2015) 10 SCC 203”** in which judgment in paragraphs 24 and 25, following was laid down by the Hon'ble Supreme Court:-

“24. We agree with the position in Nagindas Ramdas (supra) and as endorsed in Gautam Sarup (supra) that a categorical admission made in the pleadings 15 Company Appeal (AT) (Insolvency) No. 359 of 2024 cannot be permitted to be withdrawn by way of an amendment. To that extent, the proposition of law that even an admission can be withdrawn, as held in Panchdeo Narain Srivastava (supra), does not reflect the correct legal position and it is overruled.

25. However, the admission can be clarified or explained by way of amendment and the basis of admission can be attacked in a substantive proceedings. In this context, we are also mindful of the averment in the application for amendment that:

11. Mahabir Prasad Kajaria died at age of 24 years on 7th May, 1949 when the Defendant No. 5 was only 2 years and the Defendant No. 12 was only 21 years. Till the death of Mahabir and even thereafter, the Petitioners had been getting benefits from income of the joint properties. The Defendant No. 5 and his two sisters, namely, Kusum and Bina were brought up and were maintained from the income of the joint family properties. The Petitioners after the death of Mahabir, they continued to live in the joint family as members and till now members of the joint family. In the marriage of the two sisters of the Defendant No. 5 Kusum and Bina (now after marriage Smt. Kusum Tulsian and Smt. Bina Tuisian) the expenses were wholly borne out from the incomes of the joint family properties. The said facts are well known to all the family members and their relations.”

27. In the above case, this Tribunal held that date of default has sought to be changed without there being any reason or cause. In the case of ***Inakshi Sobti (supra)***, the Appellant themselves have pleaded that after registration of society of the appellant on 04.09.2020, the corporate debtor was liable to refund the amount to the appellants which default took place on 05.09.2020. The judgment of this Tribunal in the above case was on its own facts and thus, in above context this Tribunal observed that date of default cannot be changed. The present is a case where detailed pleading pertaining to default committed by the Corporate Debtor right from 29.12.2015 are already part of the Section 7 application with details of all issuance of post-dated cheques from time to time. Thus, in the present case, there are sufficient material to indicate that pleading of the case of the Financial Creditor that default was committed on 29.12.2015 but in the Section 7 application date of default mentioned is 20.032020 when the last post-dated cheque was not honoured. The judgment of this Tribunal upholding rejection of amendment application in ***Inakshi Sobti*** was on its own facts and cannot be applied in the facts of the present case.

28. There can be no dispute to the proposition that no application under Section 7 can be filed on the ground of default which has occurred during 10A period, however, whether the default is committed during 10A period or period prior to 10 A period can always be gone into and the Financial Creditor can be permitted to amend the date of default in event there are material to indicate that default has also been committed prior to 10A period.

29. Learned counsel for the Appellant has also submitted that there has been series of belated and contradictory amendment applications. We have also noticed that amendment application which was filed by the Appellant to amend the amount of default being IA(IB) No.192/CB/2023 was disposed of and in the earlier amendment application there was no prayer to amend the date of default and it was only by IA(IB) No.107/CB/2024 the Financial Creditor came with the case for amending date of default, hence, the decision on earlier application IA(IB) No.192/CB/2023 has no consequence and effect on filing of subsequent application neither disposal of earlier application in any manner prohibit filing of subsequent application.

30. It was also contended that Appellant and Respondent are related parties and in control and management of common Promoters and Directors and the pleading that Corporate Debtor sought extension of repayment, which was granted completely negate the Appellant's attempt to retrospectively allege 29.12.2015 as date of default. We have already noticed the terms and conditions of the Guarantee cum Indemnity Deed dated 14.12.2025. It is clear that ICD was only for 15 days which was with payment of interest and after 15 days no repayment was made rather a cheque dated 29.12.2015 was issued with added interest. The mere fact that post-dated cheques were issued from time to time does not mean that no default was committed by the Corporate Debtor. Permitting the Corporate Debtor to given fresh post-dated cheques cannot negate the default. It is not the case of the Corporate Debtor that at any point of time

amounts were repaid as per the Guarantee and Indemnity Deed dated 14.12.2015.

31. Coming to the pleading on default giving date of default as 20.03.2020, the Financial Creditor in Section 7 application has explained sequence of events and said date was taken since last post-dated cheque issued on 31.12.2019 was not changed and no fresh post-dated cheques were issued. Thus, the date of default, 20.03.2020 is in continuance of default which was already committed by the Corporate Debtor.

32. It is also contended by learned counsel for the Appellant that the Adjudicating Authority made observation on merits while deciding the amendment of date of default. We are of the view that while deciding the Amendment Application any observation made by the Adjudicating Authority as well as this Tribunal need not be treated as any conclusive opinion on merits of the Section 7 application and the reference given for allowing the amendment or decision of this Tribunal are only to be treated with respect to the amendment application only. We make it clear that despite order of the Adjudicating Authority allowing amendment, it shall always be open for the Corporate Debtor to raise such grounds as available in respect to Section 7 application on merits.

33. In view of the foregoing discussion, we are of the view that the Adjudicating Authority has not committed any error in allowing the amendment application IA(IB) No.107/CB/2024 filed by the Financial Creditor. No grounds have been made out to interfere with the impugned

order. The Appeal is dismissed. We, however, make it clear that any observation made by the Adjudicating Authority while deciding the Amendment Application or by this Tribunal while deciding this appeal may not be treated as any conclusive opinion on merits of the Section 7 application, which need to be decided by the Adjudicating Authority in accordance with law.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

15th December, 2025

Archana