



NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I)

IA No. 120 of 2022

and

CP (IB) 171/CHD/HRY/2021

**Under 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:

Omkara Assets Reconstruction Pvt Ltd

No. 9, MP Nagar, First Street,
Kongu Nagar Extension,
Tirupur, Tamil Nadu- 641607

..... Financial Creditor

Versus

G. P. Realtors Pvt Ltd

IREO Campus, Sector 59, Near Berhampur,
Gurgaon, Haryana- 122101

..... Corporate Debtor

Order Delivered on: 28.11.2024

CORAM: SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)
SH. UMESH KUMAR SHUKLA, HON'BLE MEMBER (T)

PRESENT:

For the Financial Creditor: Mrs. Munisha Gandhi, Senior Advocate,
Ms. Salina Chalana, Advocate,
Mr. Siddhant Kant, Advocate,
Mr. Nitin Kaushal, Advocate,
Ms. Charu Bansal, Advocate

For the Corporate Debtor : Mr. Gaurav Chopra, Advocate,
Mr. Reshabh Bajaj, Advocate,
Ms. Gauri Kaushal, Advocate,
Mr. Ruchi Kumar, Advocate



JUDGEMENT

**PER: SH. HARNAM SINGH THAKUR, MEMBER (J)
SH. UMESH KUMAR SHUKLA, MEMBER (T)**

Omkara Assets Reconstruction Pvt Ltd (hereinafter referred to as the **“Financial Creditor”**) has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **“Code”** or **“IBC”**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as the **“Rules”**) with a prayer to initiate the Corporate Insolvency Resolution Process (hereinafter referred to as the **“CIRP”**) against G. P. Realtors Pvt Ltd (hereinafter referred to as the **“Corporate Debtor”**).

2. The Petition was originally filed by Indusland Bank Limited on 09.06.2021. Thereafter, the loan facility was assigned to Omkara Assets Reconstruction Private Limited vide Assignment Agreement dated 30.09.2021. This assignment was challenged by the Corporate Debtor before Hon’ble High Court of Punjab and Haryana, Chandigarh, by way of a Writ Petition, which was dismissed. An IA No. 38 of 2022 was filed for substitution of the Financial Creditor, and the same was allowed by this Adjudicating Authority dated 24 January 2024.

3. The **IA 120 of 2022** has been filed by the Corporate Debtor G.P. Realtors Private Limited, through its Authorised Representative Mr. Arvind Lamba, under Section 10A of the Code, seeking the dismissal of the Petition on




ground that the date of default has been taken as one that is deemed, i.e., 26 March 2021 instead of the actual date of default of 11 February 2021.

4. The Corporate Debtor namely, M/s G. P. Realtors Private Limited is a Company incorporated on 17.03.2006 under the provisions of the Companies Act, 1956 with CIN U70100HR2006PTC047811 having its registered office at IREO Campus, Sector 59, Near Berhampur, Gurgaon-122101 in the State of Haryana. Therefore, this petition is within the jurisdiction of this Adjudicating Authority.

FACTS OF THE CASE:

5. It is averred by the Financial Creditor that:

- (i) The Financial Creditor had sanctioned and disbursed a rupee term loan facility to the Corporate Debtor for a maximum principal amount of Rs.300,00,00,000/- (hereinafter referred to as the **“Credit facility”**) on the terms and conditions stipulated in the Sanction Letter dated 29 June, 2016 bearing reference number IBL/C&I/2016-17/890 (hereinafter referred to as the **“Sanction letter”**), the original fee letter dated 04 August 2016 executed between the Financial Creditor and the Corporate Debtor (hereinafter referred to as the **“Facility Agreement”**), Master General Terms Agreement dated 4 August 2016 executed between the Financial Creditor and the Corporate Debtor (hereinafter referred to as the **“MGTA”**) and the Addendum letter dated 23 May 2019 (hereinafter referred to as the **“Addendum”**). The Sanction Letter, the Fee Letter, the Facility Agreement, MGTA, and the



Addendum have collectively been referred to as “**Financial Documents**” and are attached as Annexure 8 with the Petition.

- (ii) The Credit facility was granted by the Financial Creditor to the Corporate Debtor keeping in view the fact that the ultimate ownership of the Corporate Debtor lay with two renowned groups, namely, IREO Investment Holding III Limited and Ascendas India Development Trust (a part of CapitaLand Group).
- (iii) In terms of the Financing Documents, the credit facility was repayable at the end of 48 months from the date of the first drawdown, i.e., 12 August 2016. Thus, the repayment under the Credit facility by the Corporate Debtor was due on 11 August 2020.
- (iv) Vide Circulars dated 27 March 2020 and 23 May 2020, the Reserve Bank of India (hereinafter referred to as the “**RBI**”) introduced a Covid-19 Regulatory Package, whereby Banks/ Financial Institutions were permitted to grant moratorium to the borrowers in respect of repayments inter alia term loans and working capital facilities granted by them. Accordingly, the Corporate Debtor herein on its request, was also granted the benefit of the moratorium by the Financial Creditor for six months from 1 March 2020 to 31 August 2020. As a result, the repayment date under the Credit Facility was extended by six months, thus, it stood shifted from 11 August 2020 to 11 February 2021.



- (v) Despite the grant of moratorium, the Corporate Debtor defaulted on its obligations to repay the Principal Amount under the credit facilities amounting to Rs.272,66,31,168/- along with the applicable interest and default till date.
- (vi) In view of the provisions of Section 10A of the Code, the amounts under the Credit Facility became due on 11 February 2021, and as the default subsisted and the interest payment began right after the end of the 10A sanctioned period ending on 25 March 2021, the present petition was filed deeming 26 March 2021 as the date of default, as the amounts under the Credit Facility have remained pending. Accordingly, the default interest payable by the Corporate Debtor in terms of the Financing Documents has also been calculated deeming 26 March 2021 as the date of default, and the amount of default interest due and payable by the Corporate Debtor to the Financial Creditor as of 31 May 2021 is Rs.9,38,44,668/-. The default on the part of the Corporate Debtor of Rs.282,04,75,836/- comprising of a default in repayment of Rs.272,66,31,168/- towards the Principal Amount and Rs.9,38,44,668/- towards the interest/ default interest accrued from 26 March 2021 is more than Rs. 1 Crore as prescribed under Section 4 of the Code.
- (vii) The detailed particulars of the unpaid Financial Debt including the total amount of default and the date of default claimed by the applicant in Part IV of the application are as below:



PART – IV

PARTICULARS OF FINANCIAL DEBT		
1.	<p>TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT</p>	<p>The total debt disbursed by the Financial Creditor to the Corporate Debtor is Rs. 300,00,00,000/- (Rupees Three Hundred Crores) (“Credit Facility”).</p> <p>The above referred Credit Facility was based on the following:</p> <p>a) Sanction letter dated 29 June 2016 bearing reference number IBL/C&I/2016-17/890 (“Sanction Letter”);</p> <p>b) The original fee letter dated 29 June 2016 is also issued by the Financial Creditor to the Corporate Debtor in continuation of the Sanction Letter <i>inter alia</i> providing the interest rate and the interest interval applicable on the Credit Facility (“Fee Letter”);</p> <p>c) Multi-loan facility agreement dated 4 August 2016 executed between the Financial Creditor and the Corporate Debtor (“Facility Agreement”); and</p> <p>d) Master general terms agreement dated 4 August 2016, executed between the Financial Creditor and the Corporate Debtor (“MGTA”).</p> <p>e) Addendum dated 23 May 2019 issued by the Financial Creditor to the Corporate Debtor and accepted by the Corporate Debtor for extending the availability period of the Credit Facility from 4 February 2019 to 31 July 2019 (“Addendum”).</p> <p>The Request Letter, Sanction Letter, Fee Letter, the Facility Agreement, MGTA and the Addendum are collectively referred to as “Financing Documents”.</p> <p>The details regarding the disbursement made by the Financial Creditor to the Corporate Debtor with respect to the Credit Facility as listed in Point 5 of Part V of this Application are enclosed herewith as ANNEXURE 5.</p>



2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>The total amount of debt in default on part of the Corporate Debtor, as on 31 May 2021, is Rs. 282,04,75,836 /- (Rupees Two Hundred Eighty-Two Crores Four Lakhs Seventy Five Thousand Eight Hundred thirty Six Only) comprising of a default in repayment of Rs. 272,66,31,168/- (Rupees Two Hundred Seventy-Two Crores Sixty Six Lakhs Thirty One Thousand and One Hundred Sixty Eight Only) towards the principal amount and Rs. 9,38,44,668/- (Rupees Nine Crores Thirty-Eight Lakhs Forty Four Thousand Six Hundred Sixty Eight only) towards the interest / default amount accrued from 26 March 2021 till 31 May 2021.</p> <p>It may be noted that the amount of debt under the Credit Facility was repayable by the Corporate Debtor at the end of 48 (Forty-Eight) months from the date of drawdown, i.e., 12 August 2016 in the present case. Thus, the repayment under the Credit Facility by the Corporate Debtor was due and payable on 11 August 2020. However, in light of the Covid-19 Regulatory Package introduced by RBI (<i>whereby moratorium was permitted to be granted by the banks/financial institutions to the borrowers in respect of repayments under the credit facilities</i>), the Corporate Debtor was also granted the benefit of moratorium for a period of six months from 1 March 2020 to 31 August 2020. As a result thereof, the repayment date under the Financing Documents was extended by six months from 11 August 2020 to 11 February 2021.</p>
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However, despite the grant of moratorium by the Financial Creditor to the Corporate Debtor, the Corporate Debtor defaulted of its obligations to repay the principal amount under the Credit Facilities amounting to Rs. 272,66,31,168/- (Rupees Two Hundred Seventy Two Crores Sixty Six Lakhs Thirty One Thousand and One Hundred Sixty Eight Only) along with the applicable interest and default interest in terms of the Financing Documents and the same continues to be in default till date.

At this juncture, it would be pertinent to highlight for the purposes of filing the present application, keeping in view the provisions of Section 10A of the Code, while the amounts under the Credit Facility became due on 11 February 2021, the present application is being filed deeming 26 March 2021 as the date of default as the amounts under the Credit Facility have continued to remain in default.

Accordingly, the default interest payable by the Corporate Debtor in terms of the Financing Documents has also been calculated deeming 26 March 2021 as the date of default and the amount of default interest due and payable by the Corporate Debtor to the Financial Creditor as on 31 May 2021 is Rs. 9,38,44,668/- (Rupees Nine Crores Thirty-Eight Lakhs Forty Four Thousand Six Hundred Sixty Eight only).

Whereas, in view of Section 10A the default in interest between 11 February



2021 to 25 March 2021, has not been accounted for. It is Financial Creditor's respectful stand that the principal repayment being due as one bullet repayment in accordance with the terms of the Financing Documents, and the said default continuing beyond the period of suspension ending on 25 March 2021, under Section 10A of the Code, the Financial creditor is entitled to treat the principal amount as due and payable as on 26 March 2021, and is entitled to prefer the present application on the basis of such default and that it is sufficient compliance of Section 10A of the Code, as long as the Financial Creditor does not claim default qua the interest default during 11 February 2021 to 25 March 2021.

Without prejudice to the aforesaid, in case, it is held that given that the principal repayment amount became due prior to 25 March 2021, during the period of suspension under Section 10A of the Code, even then, the Corporate Debtor is in default of its obligation to pay the interest amount to the extent of Rs. 9,38,44,668/- (Rupees Nine Crores Thirty-Eight Lakhs Forty Four Thousand Six Hundred Sixty Eight only), between 26 March 2021 to 31 May 2021 which default being in excess of the threshold of Rs. 1 Crore prescribed under Section 4 of the Code, is also sufficient to file the present application and that the corporate insolvency resolution process can be initiated on this basis alone.





Accordingly, in the alternative, the amount of default for the purposes of satisfaction of Section 10A read with Section 4 of the Code may be treated as Rs. 9.38,44,668/- (Rupees Nine Crores Thirty-Eight Lakhs Forty Four Thousand Six Hundred Sixty Eight only) on account of interest default between 26 March 2021 and 31 May 2021.

The details regarding the date, amount and the days of defaults with respect to the facilities granted by the Financial Creditor to the Corporate Debtor, in a tabular form, are annexed along with the present Application as ANNEXURE 6.

As highlighted above, the Financial Creditor is filing the present application deeming 26 March 2021 as the date of default. Accordingly, the Financial Creditor reserves its liberty to file claim to the extent of full amount of default including the principal amount along with interest from 11 February 2021 till the date of insolvency commencement date with the Interim Resolution Professional or the Resolution Professional, as the case may be, at the time of filing of its claim, as Section 10A applies only for the purposes of determination of default under Section 7 of the Code and not otherwise.


This application under Section 7 of the Insolvency and Bankruptcy Code, 2016 is being filed without prejudice to the rights of the Financial Creditor available under Sections 13 and 15 of the Insolvency and Bankruptcy Code, 2016 read with the underlying regulations.



(viii) Thus, as per Part IV of the application (ibid), the financial creditor has claimed an outstanding “financial debt” of Rs. 282,04,75, 836/- and has relied on 26 March 2021 as the “date of default”. It is further submitted that on 01.06.2021, the Financial Creditor issued a notice to the G. P. Realtors Private Limited as the Borrower Corporate Debtor and a notice to IREO Private Limited as the Guarantor, calling upon them to pay the defaulted amount.

(ix) To buttress its plea, the Financial Creditor has relied on the following documents:

- (i) Certificate of Registration of charges issued by the Registrar of Companies in relation to creation of charge over the securities (Copy attached as Annexure 7 with the Application)
- (ii) Letter dated 05.04.2020 issued by the Corporate Debtor to the Financial Creditor seeking the reliefs under the Reserve Bank of India’s Covid-19 Regulatory Package; Letter dated 03.07.2020 issued by the Corporate Debtor to the Financial Creditor seeking the reliefs under the Reserve Bank of India’s Covid-19 Regulatory Package; Notice dated 01.06.2021 sent by the Financial Creditor to the Corporate Debtor, requesting for repayment, on urgent basis, of the entire principal amount along with applicable amount of default interest as on 31 May 2021; Notice dated 01.06.2021 sent by the Financial Creditor to IREO/ Corporate Guarantor, in terms of the Deed of Guarantee, demanding repayment on urgent basis, of the entire principal amount along with applicable amount of



default interest as on 31.05.2021; and Copy of financial statement of the Corporate Debtor for the Financial Year 2018-2019 duly recording the liability towards the Financial Creditor (Copy attached as Annexure 11 with the Application);

6. In the Short Written Submissions filed by the Financial Creditor vide Diary No. 00732/8 dated 23.04.2024, the Financial Creditor has reiterated the amount in default along with the list of events in a chronological form along with supporting documents.

REPLY BY THE CORPORATE DEBTOR:

7. In the Reply filed by the Corporate Debtor vide Diary No 00732/3 dated 24.01.2024, the following averments were made;

- a. The Financial Creditor has acted patently mala fide, by concocting and creating a date of default according to its convenience and without following documentary evidence, which has been placed on record with the Petition.
- b. The loan amount was due and repayable after 48 months from the date of drawdown, i.e. 12 August 2016, and therefore as per the admitted stance of the Financial Creditor, the date on which the amounts became due and repayable was 11 August 2020. Further, the Financial Creditor has, in its interim applications bearing IA No. 487/2021 and IA No. 38/2022, consistently taken the stand that loan was due and repayable on 11 August 2020 and thereafter extended to 11 February 2021 in view of the RBI moratorium. The

relevant paragraphs of IA No. 487/2021 and IA No. 38/2022 (both disposed of by this Adjudicating Authority on 24.01.2024, are reproduced hereinafter:

IA No. 487/2021

"2. By way of background, the Applicant had sanctioned and disbursed credit facilities to the Corporate Debtor for a principal amount of Rs.300,00,00,000/- (Rupees Three Hundred Crores) ("Credit Facilities") under various agreements ("Financing Documents"); which was repayable at the end of 48 (Forty-Eight) months from the date of first drawdown. i.e., 12 August 2016 in the present case. Thus, the repayment under the Credit Facility by the Corporate Debtor was due on 11 August 2020.

3. However, in view of the Covid-19 pandemic, on 27 March 2020 and 23 May 2020, the Reserve Bank of India ("RBI") released the Covid-19 Regulatory Package whereby banks/financial institutions were permitted to grant moratorium to the borrowers in respect of repayments inter alia with respect to term loans and working capital facilities granted by the banks. Accordingly, basis the requests received from the Corporate Debtor for the grant of extension in repayment, the Corporate Debtor was granted the benefit of moratorium by the Financial Creditor for a period of six months from 1 March 2020 to 31 August 2020. As a result, thereof the repayment date under the Credit Facility got extended by six months, and thus, stood shifted from 11 August 2020 to 11 February 2021."

IA No. 38/2022

"2. As a brief background, the Original Applicant had sanctioned and disbursed credit facilities to the Corporate Debtor for a principal amount of Rs.300,00,00,000/- (Rupees Three Hundred Crores) ("Credit Facility") under various agreements ("Financing Documents"), which was repayable at the end of 48 (Forty-Eight) months from the date of first drawdown. i.e., 12 August 2016 in the present case. Thus, the repayment under the Credit Facility by the Corporate Debtor was due on 11 August 2020.

3. However, in view of the Covid-19 pandemic, on 27 March 2020 and 23 May 2020, the Reserve Bank of India ("RBI") released the Covid-19 Regulatory Package whereby banks/financial institutions were permitted to grant moratorium to the borrowers in respect of repayments inter alia with respect to term loans and working capital facilities granted by the banks. Accordingly, basis the requests received from the Corporate Debtor for the grant of extension in repayment, the Corporate Debtor was granted the benefit of moratorium by the Original Applicant for a period of six months from 1 March 2020 to 31 August 2020. As a result, thereof, the repayment date under the Credit Facility was extended by six months, and thus, stood shifted from 11 August 2020 to 11 February 2021."

- c. The Corporate Debtor has placed reliance on Section 10A of this Code to state that the Application filed by the Financial Creditor with regard to a default arising during the 10A period, i.e., before 25 March 2021, is liable to be dismissed, as it is in contravention of Section 10A has been reproduced below:



"Section 10A: Suspension of initiation of corporate insolvency resolution process.

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."

- d. The said period for suspension as enumerated under Section 10A was extended for a further period of 3 months on 25 September 2020, and thereafter again extended for a further 3 months on 25 December 2020 by the Central Government. A harmonious reading of Section 10A along with the two notifications makes it clear that the bar as stated in Section 10A, applies to defaults that have occurred between 25 March 2020 and 25 March 2021.
- e. The date on which the loan after adding the moratorium period as provided by RBI on which the loan amount became due and repayable is 11 February 2021, which inevitably means that the date of default falling under the period as provided for under Section 10A of the Code.
- f. The Financial Creditor, very cleverly to overcome the bar imposed by Section 10A, despite 11 February 2021 being the date of default, is however taking the date of default on its own accord to be 26 March 2021, by cleverly calling it a 'deemed date of default'.



- g. Once the statute prohibits the filing of application, there cannot be any occasion that the Financial Creditor tides over this bar created by the statute by crafting a 'deemed date of default' thereby essentially annulling the bar created on it by the Legislature.
- h. The Corporate Debtor placed reliance on the decision of the Hon'ble Supreme Court in **Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd., (2021) 3 SCC 224** to state that *“the embargo contained in Section 10-A must receive a purposive construction, which will advance the object which was sought to be achieved by enacting the provision”*.

8. In the Short Written Submissions filed by the Corporate Debtor vide Diary No. 00732/10 dated 02.09.2024, the Corporate Debtor has stressed on the point that the Financial Creditor picking the date of default for a “deemed” one and questioned the validity of picking a deemed date.

ANALYSIS AND FINDINGS

9. We heard the submissions of both the parties and perused the pleadings on record. The Financial Creditor has annexed various documents to prove existence of the debt and default and the issue of substitution of Financial Creditor has already been settled by this Adjudicating Authority in consonance with the decision in the Writ Petition dismissed by the Hon'ble High Court. Hence, in view of the above the Financial Creditor is competent to file the present petition us 7 of IBC, 2016.



10. First, we would like to examine **“Whether the present petition is filed within the limitation period or not”**.

We notice that, in the instant case, the petition is filed on 09.06.2021, whereas the deemed date of default relied upon by the Financial Creditor is 26.03.2021, which implies that the petition has been filed within the limitation period of 03 years. Even if we consider the actual date of default as 11.02.2021 as admitted by the Corporate Debtor in its reply, as the present Petition has been filed on 09.06.2021, then also the case is well within the period of limitation.

11. The next issue for consideration before us is **“Whether the date of default would be shifted in view of the Covid-19 Regulatory Package of RBI.”**

It is worthwhile to note that the Corporate Debtor itself had issued letters dated 05.04.2020 and 03.07.2020 (Copies of the same attached as Annexure 11 with the application), requesting the grant of reliefs under the RBI’s Covid-19 Regulatory Package, which was allowed by the then Financial Creditor Indusland Bank Limited. Thus the grant of relief by the Financial Creditor on the request of the Corporate Debtor would amount to admission of the Corporate Debt and would also amount to a binding contract between them. Therefore, the repayment date under the Credit Facility would be extended by six months, thus, it stood shifted from 11 August 2020 to 11 February 2021.



12. The next issue for consideration before us is “**Whether the deemed date of default can be considered by the Financial Creditor**”.

This contention has been raised by the Corporate Debtor in IA 120 of 2022 as well as in its Short Written Submissions. In the present case, the entire Credit Facility was due and payable on 11 February 2021 even after considering the Covid-19 Regulatory Package of RBI, which would be the date of default and cannot be altered by the Financial Creditor. Thus, the repayment of loan would fall within 10A period.

13. The next issue for consideration before us is “**Whether CIRP can be initiated for default of interest component on the loan amount after the Section 10A period**”.

While 10A gives a temporary term relief to debtors to avoid any immediate threat of insolvency proceedings, it doesn't necessarily grant an overall immunity to the Corporate Debtor from executing their obligations towards the financial creditor as the underlying debt itself subsists. The financial creditor may approach the appropriate recovery forum for the debt amount due and for default during Section 10A period after 25 March 2021 i.e., the date on which the suspension period ended, the interest on the defaulted amount continued to remain due and payable. We find that a retrospective bar doesn't imply a complete discharge of the duty that is cast upon the Corporate Debtor by virtue of the credit taken from the Financial Creditor. For the same, we rely on the observation made in the case of **Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd., (2021) 3 SCC 224 (supra)** which has been reproduced below:



“24..... It must be noted, however, that the retrospective bar on the filing of applications for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the corporate debtor or the right of creditors to recover it.”

Further, in the case of **Vishal Agarwal, Erstwhile Director of Gagan I-Land Township Pvt. Ltd. v. ICICI Prudential Real Estate AIF-I and Ors. (2022) SCC Online NCLAT 421**, the Hon'ble NCLAT held that CIRP can be initiated against default of interest alone. The relevant extract of the NCLAT judgement is reproduced below:

“ There being clear admission on behalf of the Appellant in default in payment of interest for the quarters ending September 2019 and December 2019. Appellant cannot be permitted to contend that default was committed only on 31.08.2020. Insofar as application being barred by 10A, benefit under Section 10A can be claimed by the application only when there is clear default during the prohibited period. The said benefit cannot be claimed by the Appellant by ignoring the admission of default, which was prior to 25.03.2020. There being clear admission in the present case, in letter dated September 9, 2021 where the Corporate Debtor itself has admitted that he has failed to pay interest for the quarters ending September 2019 and December 2019 thus acknowledging that it has defaulted in servicing its obligations under the DSA.”

NCLAT in the matter of **Beetel Teletech Ltd. vs. Arcelia IT Services Pvt. Ltd. [Company Appeal (AT)(Insolvency) No. 1459 of 2022]** decided on 11.09.2023 by dual bench comprising of Hon'ble Mr. Justice Ashok Bhushan (Chairperson) and Hon'ble Mr. Barun Mitra (Technical Member) has also held as below:

“Further, since the default was committed prior to Section 10A period and the liability to pay interest having clocked prior to Section 10A period, we are of the considered opinion that the view taken by the Adjudicating Authority that the liability of interest which accrued during Section 10A period should be ignored or should not be computed for triggering CIRP is misconceived.”



In the present case, date of default i.e. 11 February, 2021 falls during 10A period and as per various judgement of the Superior Courts, the petition cannot be filed for any amount, whether on account of debt or interest, whose default falls during 10A period. However, as the debt does not extinguish and would remain due to the Financial Creditor, the interest would continue to accrue and payable. Therefore, if there is default in the payment of the interest, which has become accrued for the period, subsequent to 10A period, the Petition may be admitted, if it exceeds threshold of Rs.1 crore. The NCLAT in the matter of ***Harish Raghavji Patel v. Clearwater Capital Partners Singapore Fund IV Private Limited, 2023 SCC OnLine NCLAT 2367*** decided on 21.12.2023 by dual bench comprising of Hon'ble Mr. Justice Ashok Bhushan (Chairperson) and Hon'ble Mr. Barun Mitra (Technical Member) has also held that the default on the payment of interest after end of 10A period is a clear default on the payment of interest and payment of default in the interest beyond the threshold amount of more than Rs. 1 crore, the petition under section 7 deserves to be admitted. The relevant extract of the NCLAT judgement is reproduced below:

28. For sake of argument if we do not take 1st June, 2021 as date of default, the default on the payment of interest after end of the 10A period i.e. after 24th March, 2021 there is clear default on the payment of interest and payment of default in the interest of both the Financial Creditors is more than Rs. 1 Crore which is threshold amount for filing of the Application under Section 7. The tabular chart given in Exhibit K contains the details of interest accrued interest paid and interest outstanding even if we take period after 10A period i.e. period from 31st March, 2021 as mentioned in the tabular chart total overdue interest after 10A period is much more than threshold amount of Rs. 1 Crore. Details of overdue interest has been captured in the tabular form in exhibit K. For example, with regard to Respondent No. 1 overdue interest on 31st March, 2021 was Rs. 4,17,36,492/- and overdue interest on 30th June, 2021 was Rs. 5,45,41,732/- thus the defaulted amount during this quarter was itself more than Rs. 1 Crore. Similarly, with regard to Respondent No. 2 overdue interest on 31st March, 2021 was Rs. 29,47,74,305/- and overdue interest on 30th June, 2021 was Rs. 42,01,93,862/-. The date of default in payment of interest after there are several date of default in payment of interest after Section 10A period which is captured in the tabular form filed as Exhibit K in Part-IV of the Application, Financial Creditors have also filed the working for computation of the amount and days of default in tabular form thus the date of default cannot be confined only to date 1st June, 2021 as mentioned in Part-IV. The date of default which is mentioned in the tabular form cannot be ignored it is clear that there was default of more than Rs. 1 Crore i.e. threshold period in payment of default by the Corporate Debtor after Section 10A period.

29. The above default is very much there even if we ignore the default on the basis of Facility Acceleration Notice dated 30th May, 2021/31st May, 2021. We thus are of the view that even after Section 10A period there being default in payment of interest which was more than threshold amount, the Application under Section 7 deserves to be admitted.

In view of the judgment in **Beetel Teletech Ltd. (supra)** default in payment of interest component prior to the Section 10A period can be also taken into consideration but in view of the Hon'ble NCLAT's judgment in **Harish Raghavji Patel (supra)** even if the post Section 10A period interest component is taken into consideration, then also it comes out to be beyond threshold limit of rupees one crore.

In the case in hand, Financial Creditor has enclosed at Annexure-6 of the Petition the details regarding date, amount and days of default as below:

DETAILS REGARDING THE DATE, AMOUNT AND THE DAYS OF DEFAULTS WITH RESPECT TO THE FACILITIES GRANTED BY THE FINANCIAL CREDITOR TO THE CORPORATE

DEBTOR

(A) Description of Loan	(B) Reference Agreement	(C) Disbursed Amount of Loan	(D) Date of commencement of default in Repayment of Interest	(E) Date of commencement of default in Repayment of Principal	(F) Aggregate Period of Default in repayment of Interest - Calculated from (E) up to the Application Date (Without reference to the individual repayment defaults) (In No. of Days)	(G) Aggregate Period of Default in repayment of Principal Amount of Loan- Calculated from (F) up to the Application Date (Without reference to the individual repayment defaults) (In No. of Days)	(H) Principal Amount in Default as on 31 st may 2021	(I) Interest Amount in Default (including the default interest, additional interest and other interests/charges as per the Loan Agreement) as on 31 st may 2021	(H+I) Total Amount in Default as on 31 st may 2021
Term Loan	Sanction letter dated 29 June 2016 bearing reference number IBL/C&I/2016-17/890; Original fee letter dated 29 June 2016; Multi-loan facility agreement dated 4 August 2016; Master general terms agreement dated 4 August 2016; and Addendum letter dated 23 May 2019	Rs 300,00,00,000/-	26 th March 2021*	11 Feb 2021	67*	109	Rs 272,66,31,168/-	Rs 9,38,44,668/-*	Rs 282,04,75,836/-*

* Default Interest calculated from 26th March 2021 onwards



It may be seen from the above that the interest/ default interest calculated from 26 March 2021 to 31May 2021 is Rs.9,38,44,668/-, which is much beyond the threshold amount of Rs.1 crore, therefore the Petition deserves to be admitted.

14. In the sequel to the discussion above and the authorities **Beetel Teletech Ltd. And Harish Raghavji Patel** (supra) relied upon, the present petition being complete with respect to the interest component after Section 10A period upto 31st May, 2021 and the Financial Creditor has established the default in payment of interest on the part of the Corporate Debtor above the minimum threshold limit of rupees one crore (Rs.1,00,00,000/-), **the present Petition is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code:**

- (i) Moratorium under section 14 (1) for prohibiting all of the following, namely:
 - (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;



- (c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.”
- (ii) It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;
- (iii) The provisions of sub-section of section 14(1) shall not apply to such transactions, agreements or other arrangement, as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and also to a surety in a contract of guarantee to a corporate debtor.



- (iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances, as may be specified.
- (v) The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

15. The Financial Creditor has proposed Sh. Ayyagari Viswanadha Sarma having Registration No. IBBI/IPA-001/IP-P-01524/2018-2019/12396 Email ID: ayya.vish@gmail.com as Insolvency Resolution Professional (hereinafter referred to as the “IRP”. The Law Research Associate of this Adjudicating Authority has checked the credentials of Sh. Ayyagari Viswanadha Sarma and nothing adverse has been found against him. Therefore, this Adjudicating Authority appoints Sh. Ayyagari Viswanadha Sarma as IRP, with the following directions: -

- (i) The term of appointment of Sh. Ayyagari Viswanadha Sarma shall be in accordance with the provisions of Section 16(5) of the Code, subject to his written consent to be filed within 7 days of this order;



- (ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers, as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets, over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- (iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- (iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,




2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- (v) The IRP/RP shall prepare the Audited Financial Statements as on date of the CIRP and shall submit before the CoC for consideration.
- (vi) The IRP/RP shall also ensure that all the assets appearing in the Financial Statements on the CIRP date have been considered in the valuation report. The IRP/RP shall send individual communication through post or electronic means along with a copy of public announcement to all the creditors as per last available books of accounts/ financial statements on the CIRP date of Corporate Debtor as prescribed under Regulation 6A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (vii) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- (viii) The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under Section 128 of the Companies Act. In case, the books are maintained in the electronic mode, the Suspended Board of




Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/ RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than eight financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

- (ix) In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/ RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the



corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.

- (x) In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/ RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/ RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.
- (xi) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/ documents available with those authorities/ institutions/ others pertaining to the corporate debtor, which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and



cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

(xii) The Interim Resolution Professional shall, after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

(xiii) The Interim Resolution Professional is directed to send a regular progress report to this Adjudicating Authority every fortnight.

16. The Financial Creditor is directed to deposit Rs.4,00,000/- (Four Lakhs) only with the Interim Resolution Professional to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

17. A copy of this Order shall immediately be communicated to the Financial Creditor Bank, the Corporate Debtor, IBBI, and the IRP named above by the Court Officer/Registry of this Adjudicating Authority.



18. The Application CP IB 171/Chd/Hry/2021 is admitted and IA 120 of 2022 is partially allowed and disposed of accordingly.

Sd/-
(UMESH KUMAR SHUKLA)
MEMBER (T)

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (J)

November 28, 2024
RHEA