

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1052 of 2022 & I.A. No. 4514 of 2022

(Arising out of the Order dated 13.06.2022 passed by the National Company Law Tribunal, Allahabad Bench, Prayagraj in CP (IB) No. 05/ ALD/ 2022)

IN THE MATTER OF:

JC Flowers Asset Reconstruction Private Limited

12th Floor, Crompton Greaves House,
Dr. Annie Besant Road,
Worli, Mumbai – 400030, Maharashtra
Email :- harsh.jharwal@jcfarc.com

...Appellant

Versus

Laxmi Oil and Vanaspati Private Limited

704, Kan Chamber, 7th Floor, 141113,
Civil Lines , Kanpur Nagar, Kanpur – 208002.

...Respondent

Present

For Appellant: Mr. Sumesh Dhawan, Mr. Jaskaran S. Bhatia,
Mr. Shaurya Shyam, Advocates.

For Respondent: Mr. Ashish Choudhury, Mr. Akash Agarwal,
Mr. Abhishek Arora, Advocates.

J U D G E M E N T

(23.04.2024)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present Appeal has been filed by Yes Bank Limited (in short ‘**the Original Appellant/ Financial Creditor**’) under Section 61 of the Insolvency & Bankruptcy Code, 2016 (in short ‘**Code**’) in Company Appeal (AT) (Insolvency)

No. 1052 of 2022 against the Impugned Order dated 13.06.2022 passed by the National Company Law Tribunal, Allahabad Bench, Prayagraj (in short ‘**Adjudicating Authority**’) in CP (IB) No. 05/ALD/2022 .

2. An I.A. No. 991 of 2023 was filed under Rule 11 r/w Rule 31 of the National Company Law Appellate Tribunal Rules, 2016 by J.C. Flowers Asset Reconstruction Private Limited (in short the **Appellant**) seeking its substitution as the Appellant/ Financial Creditor in place of Yes Bank on the virtue of an assignment agreement executed between the J.C. Flowers Asset Reconstruction Private Limited and the Axis Bank on 16.12.2022 for the loan given to the Corporate Debtor by the Yest Bank which has been assigned to the Applicant. The Application was allowed by this Appellate Tribunal on 06.03.2023 and as such J.C. Flowers Asset Reconstruction Private Limited replaced the Yest Bank Limited as the Appellant.

3. Laxmi Oil and Vanaspati Private Limited the Corporate Debtor is the Respondent herein.

4. Heard the Counsel for the Parties and perused the records made available including the cited judgements.

5. It is noted that the Respondent availed credit facilities from the original Appellant vide credit facility letter bearing reference no. YBL/ DEL/ FL/ 200/ 2016-17 dated 26.03.20217 for Rs. 10 Crores as cash credit facility for a period of 12 months against the exclusive charge on the residential land and building.

This facility was to expire on 15.03.2018. In pursuance to this facility, a Master Facility agreement (**Facility Agreement**) was signed between the Appellant and the Respondent on 29.03.2017. This secured cash credit limit was extended vide letter dated 15.02.2018 enhancing from Rs. 10 Crores to Rs. 20 Crores and was valid up to 22.01.2019 which was further renewed upto 24.07.2019. A Supplementary Master Facility Agreement (**Supplementary Agreement**) and a Deed of Hypothecation (**Hypothecation Deed**) were executed on 21.02.2018. These facilities were secured by way of letters of continuing guarantees dated 02.02.2018 and 08.05.2018 executed by Mr. Shib Shankar Roy, Kamal Deep Tripathi, Satish Kumar Rawat, Keshav Singh Gaur, Ms. Tarulata Biswas and Nipun Garg as Personal Guarantors in favour of the Appellant.

6. It is case of the Appellant that the Respondent delayed in making payments towards interest against the facilities for the month of November 2019, December 2019 and January, 2020 and interest for this period from November, 2019 to January, 2020 were debited in the cash credit facilities on 01.12.2019, 01.01.2020 and 01.02.2020 which were serviced by the Respondent on 26.02.2020 and 27.02.2020 albeit with delay.

7. The Appellant stated that interest for the month of February, 2020 was Rs. 27,93,039/- which was charged in the cash credit account on 01.03.2020 for outstanding dues dated 29.02.2020 and cash credit limit was over drawn to

Rs. 20,27,91,254.42/- as such the cash credit was over due by a period of one day for the interest amount.

8. The Appellant further submitted that in terms of RBI Guidelines dated 27.03.2020 regarding NPA during Covid period, where banks were directed not to declare borrowers as NPA for default of payments arising during the period from 01.03.2020 to 31.08.2020 and accordingly the Appellant did not charge any interest on the cash credit facilities of the Corporate Debtor during this period and only on 01.09.2020, the Appellant charged interest towards cash credit facilities of the Respondent, which has also not been serviced by the Respondent till date.

9. The Appellant, on failure of the Respondent, for non adherence to terms as per the signed facility agreement and keeping in view the RBI Guidelines, the Appellant declared the Respondent as NPA on 20.07.2020 i.e., due to non submission of stock statement by the Respondent for a continued period on 6 months as last stock statement was submitted by the Respondent for the month of December, 2019.

10. The Appellant vide letter dated 27.08.2020 issued a loan recall notice to the Respondent and vide letter dated 07.09.2020 the guarantee extended by the guarantors were also invoked.

11. The Appellant emphasised that despite several reminders and request to the Respondent, the Respondent did not honour the terms of facility agreement and the debt remained unpaid as on 31.08.2021 for Rs. 25,99,34,488/- .

12. The Appellant submitted that despite his best efforts, due to failure of the Respondent, he filed an application under Section 7 of the Code for initiating Corporate Insolvency Resolution Process (in short ‘**CIRP**’). However, the Adjudicating Authority vide its Impugned Order dated 13.06.2022, dismissed the application holding that there is no basis for determining the date of default as 28.02.2020 and further, opined that loan recall notice had been issued on 27.08.2020 which falls between the period covered under Section 10 A of the Code.

13. It is the argument of the Appellant that the Adjudicating Authority failed to consider the fact that the Respondent defaulted in repaying its monthly dues for the month of February, 2020, the period which much prior to period stipulated under Section 10A of the Code.

14. The Appellant elaborated that Section 10 A of the Code prescribed that no insolvency proceedings can ever be instituting against any entity whatsoever for default cause/ committed in the stipulated period therein. Thus, Section 10 A of the Code could be attracted only to default committed during this stipulated period and not for period prior to stipulated period.

15. It is the case of the Appellant that Section 10 A was introduced only to safeguard the interest of distress businesses effected by the Covid-19 pandemic and was not meant to give shelter and protection to habitual defaulters to evade their liabilities. The Appellant further elaborated that the Respondent committed

the default for the first time in the month of February, 2020 and the default was continuing thereafter.

16. The Appellant submitted that that explanation given under Section 10A of the Code clarify that Section 10A shall not apply to any default committed before 25.03.2020 and since the default was committed by the Respondent in February, 2020, there was no scope whatsoever regarding applicability of Section 10A of the Code and therefore the Impugned Order is patently illegal.

17. The Appellant pointed out that the as per the Section 3(12) of the Code, default can be even for any part or instalment of the amount of debt which has become due and payable and not repaid. The Appellant submitted that the present case is squarely covered under the definition as provided in Section 3(12) of the Code.

18. The Appellant pleaded that in view of several judgment of Hon'ble Supreme court of India as well as this Appellate Tribunal, once conditions as stipulated under Section 7 of the Code, are fulfilled, the Adjudicating Authority ought to have admitted to application filed under Section 7 of the Code and cited the Judgment in this regard delivered in the case of *Laxmi Pat Surana Vs. Union Bank of India* [(2020) SCC Online SC 1187].

19. The Appellant pointed out that the Respondent relied upon the circulars issued by the Reserve Bank of India, imposing moratorium from 01.03.2020, which is a clear admission of the debt falling due before the period enshrined

under Section 10 A of the Code and submitted that the Respondent cannot take the benefit of both the RBI circulars as well as Section 10 A of the Code.

20. The Appellant pointed out that the Circular issued by the RBI on 27.03.2020 was merely for the purpose of deferring the recovery of monies falling due between March 1, 2020 and May 31, 2020 and since the Respondent defaulted in making payment of interest due on 28.02.2020 in terms of value date as provided in the account statement of the Corporate Debtor, the same is not covered as per RBI Circular on this aspect.

21. The Appellant explained that in his banking system, the instalment become due on the last date of every month and is payable on the first day of the next month. As such the default occurred on 28.02.2020 and payable on 01.03.2020 and in this regard, the Appellant reiterated that RBI Circular is not applicable as the RBI Circular used the word 'Due' and clearly the instalment become due on 28.02.2020.

22. Concluding his remarks, the Appellant submitted that the Impugned Order is illegal and perverse and requested this Appellate Tribunal to set aside the Impugned Order and allow his appeal.

23. Per contra, the Respondent denied all the averments made by the Appellant treating these to be misleading, mischievous and devoid of any merit.

24. The Respondent submitted that the Impugned Order has been passed by the Adjudicating Authority after carefully scrutinising the submissions of both the

parties and based on legal position, which protects the case of the Respondent regarding alleged default.

25. The Respondent refuted the allegations of the Appellant that the Respondent failed to adhere to the facility agreement and further refuted that the cash credit amount started showing delay in interest service.

26. The Respondent submitted that he was regular in servicing the credit facility and denied that interest for the month of February, 2020 was not paid till date or there was any default on this account.

27. It is the case of the Respondent that the original Appellant/ Yes Bank wrongly declared the Respondent as NPA on 20.07.2020 without following rules and regulations of the RBI. The Respondent submitted that the Appellant classified the Corporate Debtor as NPA due to non submission of stock statement and not on account of default in payment of any interest.

28. The Respondent pointed out that the Appellant issued a loan recall notice on 27.08.2020 regarding the entire credit facilities and calling upon the Respondent to pay the alleged debt, which falls within the prohibition period as laid down under Section 10A of the Code i.e., after 25.03.2020.

29. It is the case of the Respondent that the Appellant could not have initiated any application under section 7 of the Code as per the legal mandate provided by Section 10A of the Code.

30. The Respondent submitted that facilities were extended up to July 2020 and the Appellant in their letter dated 20.12.2019 did not stipulate any timelines for repayment of loan by the Respondent and without taking any further action of settling the matter amicably and as per law, the Original Appellant all of a sudden classified the account of the as NPA.

31. The Respondent reiterated that there is no basis for determining the date of default as 28.02.2020 and only relevant date was loan recall notice issued on 27.08.2020 which falls in the period as satisfied under Section 10 A of the Code.

32. The Respondent pointed out that the alleged default occurred during the prohibited period between 25.03.2020 and 31.03.2021 for which no action under Section 7 of the Code could have been taken in terms of provision of Section 10 A of the Code.

33. Concluding his arguments, the Respondent requested this Appellate tribunal to dismiss the appeal.

Findings

34. We note that Section 10 A of the Code was introduced by amendment Act of 2020 dated 05.06.2020 with the purpose to support the business and industry who were adversely affected due to covid 19 pandemic. Section 10 A of the Code provides temporary suspensions on initiation of CIRP, which was provided initially for six months with the provision to be extended from time to time as notified.

35. We note that proviso to Section 10 A clearly mentions that “*no application shall ever be filed*” for initiation of CIRP of “*for the said default occurring during the said period*”, which signifies that the Parliament clearly envisaged to bar initiation of any application for CIRP, in respect of default which has occurred on or after 25.03.2020 for a period as notified from time to time.

36. We also note that the explanation to Section 10 A (quoted above under definition) has been introduced to remove any doubt and clarified the statutory provisions shall not apply to any default occurred before 25.03.2020. Thus, reading the proviso and the explanation, it is obvious that no protection was intended or may available for any default committed prior to 25.03.2020, however the default committed after 25.03.2020, till stipulated period were given complete immunity against the CIRP proceedings.

37. We also note that Hon’ble Supreme Court of India has issued a suo-moto order in *Suo Moto Writ Petition (c) No. 3 of 2020* vide order dated 10.01.2022, which reads as under:-

1. In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic.

5 (iv) It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

(Emphasis Supplied)

38. We note that the Section 10 A of the Code, by nature, is preventive and prohibitory and begins with non obstante clause i.e., “***notwithstanding anything contained in Section 7,9 and 10***” and therefore, places complete embargo for initiation of CIRP under these Sections for the period beginning with 25.03.2020 till stipulated period. However, explanation clarify the position that Section 10 A is not meant to be applicable or embargo for initiation of CIRP for default occurred prior to 25.03.2020.

39. In this regard, we would like to refer to the judgment of the Hon’ble Supreme Court of India passed in ***Ramesh Kymal vs. M/s Siemens Gamesa Renewable power Pvt. Ltd.*** [Civil Appeal No. 4050 of 2020] para 24, 26 and 27.

“24 We have already clarified that the correct interpretation of Section 10A cannot be merely based on the language of the provision; rather it must take into account the object of the

Ordinance and the extraordinary circumstances in which it was promulgated. 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.

26 The date of the initiation of the CIRP is the date on which a financial creditor, operational creditor or corporate applicant makes an application to the adjudicating authority for initiating the process. On the other hand, the insolvency commencement date is the date of the admission of the application. This distinction is also evident from the provisions of sub-section (6) of Section 7, sub-section (6) of Section 9 and sub-section (5) of Section 10. Section 7 deals with the initiation of the CIRP by a financial creditor; Section 8 provides for the insolvency resolution by an operational creditor; Section 9 provides for the application for initiation of the CIRP by an operational creditor; and Section 10 provides for the initiation of the CIRP by a corporate applicant, NCLAT has explained the difference between the initiation of the CIRP and its commencement succinctly, when it observed:

"13. Reading the two definition clauses in juxtaposition, it emerges that while the first viz. 'initiation date' is referable to filing of application by the eligible applicant, the later viz. 'commencement date' refers to passing of order of

admission of application by the Adjudicating Authority. The 'initiation date' ascribes a role to the eligible applicant whereas the 'commencement date rests upon exercise of power vested in the Adjudicating Authority. Adopting this interpretation would leave no scope for initiation of CIRP of a Corporate Debtor at the instance of eligible applicant in respect of Default arising on or after 25th March, 2020 as the provision engrafted in Section 10A clearly bars filing of such application by the eligible applicant for initiation of CIRP of Corporate Debtor in respect of such default. The bar created is retrospective as the cut-off date has been fixed as 25th March, 2020 while the newly inserted Section 10A introduced through the Ordinance has come into effect on 5th June, 2020. The object of the legislation has been to suspend operation of Sections 7, 9 & 10 in respect of defaults arising on or after 25th March, 2020 i.e. the date on which Nationwide lockdown was enforced disrupting normal business operations and impacting the economy globally. Indeed, the explanation removes the doubt by clarifying that such bar shall not operate in respect of any default committed prior to 25th March, 2020."

27 We are in agreement with the view which has been taken by the NCLAT for the reasons which have been set out earlier in the course of this judgment. We affirm the conclusion of

the NCLAT. The appeal is accordingly dismissed. There shall be no order as to costs.”

(Emphasis Supplied)

40. From above it become clear that the bar on the filing of application for the commencement of CIRP during stipulated period does not extinguish the debt owed by the Corporate Debtor and creditors/ lenders may continue to exercise their rights to pursue their legal remedies under Section 7,9 and 10.

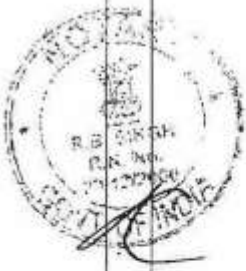
41. We note that loan recall notice was sent to the Respondent on 27.08.2020 which is obviously after beginning of the stipulated period of 25.03.2020.

42. The moot question in the present appeal would be to determine when actually the default took place and whether this was covered under Section 10A of the Code.

43. In this regard, we would like to take into consideration part (IV) of the application filed by the Appellant before the Adjudicating Authority.

| PART-IV | | | | | | | | | | | | | | |
|--------------------------------------|--|--|-------|------|--------|----|------------|----------------|----|------------|----------------|--|-------|----------------|
| PARTICULARS OF FINANCIAL DEBT | | | | | | | | | | | | | | |
| 1. | TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT | <u>Total amount of debt granted:</u> Rs. 20,00,00,000/- (Rupees Twenty Crores only) <u>Dates of disbursement:</u> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"><thead><tr><th style="width: 10%;">S.No.</th><th style="width: 30%;">Date</th><th style="width: 60%;">Amount</th></tr></thead><tbody><tr><td style="text-align: center;">1.</td><td style="text-align: center;">24.03.2017</td><td style="text-align: right;">10,00,00,000/-</td></tr><tr><td style="text-align: center;">2.</td><td style="text-align: center;">15.02.2018</td><td style="text-align: right;">10,00,00,000/-</td></tr><tr><td></td><td style="text-align: center;">Total</td><td style="text-align: right;">20,00,00,000/-</td></tr></tbody></table> | S.No. | Date | Amount | 1. | 24.03.2017 | 10,00,00,000/- | 2. | 15.02.2018 | 10,00,00,000/- | | Total | 20,00,00,000/- |
| S.No. | Date | Amount | | | | | | | | | | | | |
| 1. | 24.03.2017 | 10,00,00,000/- | | | | | | | | | | | | |
| 2. | 15.02.2018 | 10,00,00,000/- | | | | | | | | | | | | |
| | Total | 20,00,00,000/- | | | | | | | | | | | | |
| 2. | 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) | <u>Amount Claimed to be in Default:</u> Rs. 25, 99, 34, 488.25/- (Rupees Twenty Five Crores Ninety Nine Lakhs Thirty Four Thousand Four Hundred Eighty Eight and Twenty Five Paise Only) as on 06.09.2021. <u>Date of Default:</u> 28.02.2020 <u>Date of NPA:</u> 20.07.2020 Bank Account Statement of CC Account No. 007381300000601 is annexed herewith and marked as <u>ANNEXURE A-4 (COLLY)</u> . It is stated: 1. That the Financial Creditor is a registered Company under Companies Act 1956 and a recognised Private Nationwide Bank. A photocopy of the Masterdata of the Financial Creditor available on MCA is being filed herewith and marked as <u>ANNEXURE NO. – 5</u> 2. That the Corporate Debtor, a company registered with Registrar of Company Kanpur Nagar, showed its willingness to obtain a Cash | | | | | | | | | | | | |



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|  | <p>Credit Limit of Rs. 10,00,00,000/- from the Financial Creditor. Accordingly, vide a Facility Letter dated 24.03.2017, a Cash Credit Limit of Rs. 10,00,00,000/- was provided to the Corporate Debtor, for Working Capital, against the Exclusive Charge on the residential land and building located at 158 E/107 E, M Bye Pass Road, South 24 Pargana West Bengal – 700040 (belonging to one Mr Shib Shankar Roy) and Personal Guarantee of Mr Shib Shankar Roy, Nipun Garg, Satish Rawat and Vishal Jaiswal. The above limit was provided for a period of 12 months, scheduled to be expired on 15.03.2018. A photocopy of Facility Letter dated 24.03.2017 and Master Facility Agreement dated 29.03.2017 being filed herewith and marked as <u>ANNEXURE NO. – 6</u></p> <p>3. That later on, vide another Facility Letter, the Cash Credit Limit was extended to Rs. 20,00,00,000/- and the same was available till 22.01.2019. The said facilities were secured by way of Exclusive Charge on the land admeasuring 93 cottah at Sonarpur, Jagatipota, Kolkata – 700078 (belonging to one Mr Tarulata Biswas) and Exclusive Charge on the house no. 117/L/293 Naveen Nagar, Kakakdeo, Kanpur (belonging to the Borrower) were also created in addition to the existing securities as mentioned above in Part IV Point No. 2.2. Furthermore, a Deed of Hypothecation was executed on 21.02.2018.</p> |
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Accordingly, Form CHG – 1 was uploaded on MCA by the Corporate Debtor. A photocopy of Facility Letter dated 15.02.2018, Supplementary Master Facility Agreement dated 21.02.2018, Deed of Hypothecation dated 21.02.2018 and Form CHG – 1 are being filed herewith and collectively marked as **ANNEXURE NO. – 7**

4. That Memorandum of Entry were executed on 14.03.2018 for property located at Khatain No. 175 Mouza Nayabad, JL No. 17, R.S. No. 173, P.S. Tiljala Sonarpur, District 24 Parganas and on 19.04.2018 for property located at House No. 117/L/293, Naveen Nagar, Kakadeo, Kanpur Nagar constructed over the freehold property located at Plot No. 246, Block – L, Scheme No. 1, Kakadeo, Kanpur Nagar and on 13.06.2018 for property located at Touzi No. 1131 of Alipore Railway Station, Sanarpur, Sub registry Re – Sur No. 185 JL, No. 03 at Moua Jagitpota under Khatian No. 2 finally published under Revenue Settlement 1951 under Revisional Survey Khatian No. 17 and coming part of Khatian No. 18 in Dag 9/65. A photocopy of Deed of Equitable Mortgage dated 14.03.2018, 19.04.2018 and 13.06.2018 are being filed herewith and collectively marked as **ANNEXURE NO. – 8**

5. That once again, vide a Facility Letter dated 24.07.2019, the Cash Credit Limit, already extended for Rs. 20,00,00,000/- and available till 22.01.2019, was renewed. A photocopy of



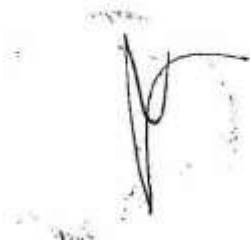
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| | <p>the Facility Letter dated 24.07.2019 is being filed herewith and marked as <u>ANNEXURE NO. – 9</u></p> <p>6. That thereafter, the Corporate Debtor failed to adhere to the arrangement agreed upon and the Cash Credit Amount started showing delay in interest service, no significant movement by the Corporate Debtor and the plants remained inoperative since May 2019. Therefore, vide a letter dated 20.12.2019, the Financial Creditor informed the Corporate Debtor to comply with the requirements mentioned in the Facility Agreement. A photocopy of the Letter dated 20.12.2019 is being filed herewith and marked as <u>ANNEXURE NO. – 10</u></p> <p>7. That thereafter on 28.02.2020, the Corporate Debtor failed to make the repayment and hence the default of the concerned debt took place.</p> <p>8. That upon the failure of Corporate Debtor to comply with the requirements as agreed upon by the executed Facility Letters and Agreements, and in light of the rules and regulations of Reserve Bank of India, the Corporate Debtor was declared Non - Performing Asset on 20.07.2020 and accordingly vide Letter dated 27.08.2020, a Loan Recall Notice was sent to the Corporate Debtor and on 07.09.2020 the Guarantee extended by the Guarantors was invoked. A photocopy of the Loan Recall Notice dated 27.08.2020 and Guarantee Invocation dated 07.09.2020 are being filed herewith and</p> |
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| | <p>marked as <u>ANNEXURE NO. – 11</u></p> <p>9. That despite repeated reminders sent to the Corporate Debtor, the Corporate Debtor has failed to comply with the same and the debt as on 06.09.2021, Rs. 25, 99, 34, 488.25/- (Rupees Twenty Five Crores Ninety Nine Lakhs Thirty Four Thousand Four Hundred Eighty Eight and Twenty Five Paise Only) is yet to be unpaid as evident from the perusal of the Account Statement of Corporate Debtor, annexed herein as Annexure No. 4.</p> <p>10. In view of the facts and circumstances mentioned hereinabove, it is clear that the Corporate Debtor has defaulted in repayment of the financial debt owed to the Applicant herein. Being so, the instant case is a fit case for commencement of Corporate Insolvency Resolution Process of the Corporate Debtor in terms of Section 7(5)(a) of the IBC.</p> |
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44. From above is seen that in particular of financial debt, amount claimed is Rs. 25,99,34,488.25/- as on 06.09.2021 and date of default mentioned as 28.02.2020 along with date of NPA as 20.07.2020.

45. From part IV we also note that vide letter dated 20.12.2019, the Appellant asked the Respondent to comply with the requirement mentioned in the facility agreement. It is further noted that part IV mentioned that on 28.02.2020, the Corporate Debtor failed to make repayment and hence default took place. Part IV also states that as per RBI Guidelines, the Corporate Debtor was declared as NPA on 20.07.2020 and loan recall notice was issued on 27.08.2020. It is also mentioned that despite several reminder, the Corporate Debtor failed to comply the terms of facility agreement and therefore the Appellant filed an application under section 7 of the Code.

46. From above, it is further seen that the Appellant claimed date of default as 28.02.2020 which is prior to stipulated date of 25.03.2020 under Section 10 A of the Code, however, the loan recall notice dated 27.08.2020 and the date of NPA is 20.07.2020, both these dates are after the stipulated date of 25.03.2020 as per Section 10 A of the Code.

47. We note from the Written Submissions of the Appellant filed vide Diary No. 82066 dated 10.04.2024 that instalment became due on the last date of every month and was payable on the first date of next month.

| Month | <u>Date on which the installment became due</u> | <u>Date on which the installment became payable</u> |
|---------------|---|---|
| December 2019 | 31.12.2019 | 01.01.2019 |
| January 2020 | 31.01.2020 | 01.02.2019 |
| February 2020 | <u>28.02.2020</u> | <u>01.03.2019</u> |

(Emphasis Supplied)

Thus, it is the case of the Appellant that payment is due on the last date of month but payable on 1st date of following months.

48. At this stage, we would like to refer to the relevant portion of **Section 7(1)** which reads as under :-

“7. Initiation of corporate insolvency resolution process by financial creditor.

*(1) A financial creditor either by itself or jointly with 2 [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred. ***”*

(Emphasis Supplied)

Section 7(1) stipulates that the Financial Creditors may file an application under Section 7 for initiating CIRP against the Corporate Debtor before the Adjudicating Authority when a **‘Default’** has occurred. Thus, the crucial word is

‘Default’. Hence we note that the definition of default as given in Section 3 (12) reads as under :-

“3. Definitions.

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not 1 [paid] by the debtor or the corporate debtor, as the case may be;”

(Emphasis Supplied)

49. Thus default takes place when any part or instalment of debt has become **“Due and Payable”** and not **‘paid’**. We consciously note that word is **“Due and Payable”** and not ‘Due’ or ‘Due or Payable’. This signifies that both events should have happened to establish default.

50. In the present appeal, the Appellant fairly stated that due occurred on the last date of February, 2020 but was payable on 01.03.2020. Hence, strictly speaking the date of default can not be 28.02.2020 as claimed by the Appellant in Part IV and at best could be as 01.03.2020 i.e., when it became payable.

51. Unless the debtor commits default, CIRP against him cannot be initiated under the Code. The words “Due and Payable” used in definition of “default” in section 3 (12) means that the default debt must be subsisting debt. The terms ‘default’ is defined in Section 3(12) of the Code in very wide terms as non-payment of a ‘debt’ once it becomes due and payable, which includes non-payment of even part thereof or an installment. A creditor is not only required to establish the existence of a debt but is also required to prove that the corporate

debtor has defaulted in payment of the debt and if he fails to establish the same, the CIRP cannot be initiated by the Adjudicating Authority. In other words, the mere fact of a 'debt' being due and payable is not adequate to justify the initiation of CIRP at the instance of the creditor, unless the 'default' on the part of the Debtor is established.

52. We note that RBI vide its Circular No. RBI/2019-20/186 dated 27.03.2020 permitted moratorium of three months on payment of all installments between 01.03.2020 to 31.05.2020, and reads as under :-



भारतीय रिजर्व बैंक
RESERVE BANK OF INDIA
www.rbi.org.in

RBI/2019-20/186

DOR.No.BP.BC.47/21.04.048/2019-20

March 27, 2020

All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks)
All Primary (Urban) Co-operative Banks/State Co-operative Banks/ District Central Co-operative Banks
All All-India Financial Institutions
All Non-Banking Financial Companies (including Housing Finance Companies)

Madam / Dear Sir,

COVID-19 – Regulatory Package

Please refer to the Statement of Development and Regulatory Policies released on March 27, 2020 where inter alia certain regulatory measures were announced to mitigate the burden of debt servicing brought about by disruptions on account of COVID-19 pandemic and to ensure the continuity of viable businesses. In this regard, the detailed instructions are as follows:

(i) Rescheduling of Payments – Term Loans and Working Capital Facilities

2. In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing finance companies) ("lending institutions") are permitted to grant a moratorium of three months on payment of all instalments¹ falling due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.

¹ Instalments will include the following payments falling due from March 1, 2020 to May 31, 2020: (i) principal and/or interest components; (ii) bullet repayments; (iii) Equated Monthly instalments; (iv) credit card dues.

53. At this juncture, we will also like to refer to Facility Agreement dated 27.03.2017 :-

30

ANNEXURE A-4

YES BANK

Ref.: YB1/DEL/FL/2009/2016-17
Date: March 29, 2017

M/s. Laxmi Oil and Vanshpati Private Limited,
14/113, 7th, Kan Chamber,
Civil Lines, Kanpur - 208001

Dear Sir,

Re: Credit Facilities.

We, YES BANK Limited (the "Lender") or "YBL" hereby agrees to offering M/s. Laxmi Oil and Vanshpati Private Limited (the "Borrower"), the below (or includes the "Facilities") on the terms and conditions set out herein below:-

1. Facility Details:

| S. No. | Facility Description | Applicable Rate of Interest/Commission | Security | Financial Covenant / Special Terms & Conditions |
|--------|--|--|--|---|
| 1. | <p>Facility: Cash Credit ("CC")</p> <p>Amount: INR 100,000,000/- (Indian Rupees One Hundred Million only)</p> <p>Purpose: For working capital requirements</p> <p>Tenor: Maximum 12 months</p> <p>Margin: 30% of [(Stocks minus Creditors) plus Book Debts (not more than 44 days old)]</p> <p>Nature: Revolving</p> <p>Availability Period: Till March 15, 2018</p> <p>Additional Rate of Interest: 2% over applicable rate</p> | <p>Applicable Rate of Interest:</p> <p>Floating: Standard clause 0.90% ("Spread") over and above 6 months MCLR.</p> <p>Interest Reset Date: 1st day of the month falling after six calendar months (including the month in which drawdown has been made) from the date of relevant Drawdown and every 6 months thereafter.</p> <p>Interest Payment Dates: Monthly</p> | <p>• Exclusive Charge by way of Equitable Mortgage on Residential land and Building situated at 158 E/107, E. M. Bye Pass Road, South 24 Parganas, West Bengal- 700010 comprising 27 Katha as total area and owned by Mr. Shih Shankar Roy with minimum cover of 1.25x.</p> <p>• Unconditional and irrevocable Personal Guarantee of <u>Shih Shankar Roy</u>, <u>Nipon Gang Sathish Rayat</u> and <u>Vishal Jaiswal</u> to remain valid during the tenor of the credit facilities with us.</p> | <p>Special Terms & Conditions:</p> <p>• Post dated Cheque/Undated Cheque ("PDC/UDC") of INR 100 Million from the borrower along with declaration in YBL standard format.</p> <p>• Total credit exposure of all the facilities shall not exceed INR 100 MM.</p> <p>• Any disbursement to be done only post security perfection.</p> <p>Financial Covenant:</p> <p>• Statement of stock and bank debts to be submitted on monthly basis.</p> <p>• Furnish to us financial information on quarterly basis within 45 days of each quarter end.</p> <p>• YBL facilities to be rated by 31st March, 2017.</p> <p>• Audited financials of YBL to be submitted by 30th March, 2017.</p> |

YES BANK Ltd., Ground Floor, Property No- 124/244, Plot No - 145, C - Block,

YES TOUCH PhoneBanking Number: 1800 2000 (Toll Free for Mobile & landline in India) +91 22 30993400 (When calling from Outside India) Toll Free number from USA / Canada: 1877 629 8044 UK 0800 178 1133 UAE: 8000 3570 3099

CIN - L65190MH2003PLC143249

Corporate & Registered Office: Nehru Centre, 9th floor, Discovery of India, Dr. A. B. Road, Worli, Mumbai - 400 018, India. Fax: +91 (0)22 2560060 www.yesbank.in

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From above, it is clear that ‘Interest Dates’ is shown as ‘monthly’ but no particular date has been specified and the Appellant has pleaded that it become due on last date of month but payable on 1st of the following month.

We also note that “statement of stock” is to be submitted on monthly basis as part of the financial covenant, but no where it is indicated that submission of stock statement by the Respondent to the Appellant is condition precedent or breach of which result into default of debt.

54. We observe that as per the Code, it is for the Adjudicating Authority to satisfy himself at the stage of admission of application under Section 7 of the Code that default has occurred w.r.t. the debt was due and payable, which remains unpaid, then the Adjudicating Authority is required to admit such application. The word to pay such money in *praesenti* i.e., such debt is due for payment in *praesenti* or is payable at present i.e., relevant date.

55. We would also like to refer to the accounts statement maintained by the Original Appellant in respect of the Respondent. The statement begins from 01.03.2017 and the relevant pages of the statement are reproduced as under :-

| TXN DATE | VALUE DATE | DESCRIPTION | REFERENCE | DEBITS | CREDITS | BALANCE |
|-------------|-------------|--|--------------|---------------|------------|-----------------|
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-5427298148-17.02- HDFCBAN | | 300.00 | 0.00 | -189,915,251.94 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -189,915,305.94 |
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-5453842907-17.02- TOYOTAF | | 300.00 | 0.00 | -189,915,605.94 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -189,915,659.94 |
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-5601063532-25.02- RLOANAX | | 300.00 | 0.00 | -189,915,959.94 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -189,916,013.94 |
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-5601063533-25.02- RLOANAX | | 300.00 | 0.00 | -189,916,313.94 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -189,916,367.94 |
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-5601063534-25.02- RLOANAX | | 300.00 | 0.00 | -189,916,667.94 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -189,916,721.94 |
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-5601063535-25.02- RLOANAX | | 300.00 | 0.00 | -189,917,021.94 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -189,917,075.94 |
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-5601063536-25.02- RLOANAX | | 300.00 | 0.00 | -189,917,375.94 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -189,917,429.94 |
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-5611486556-25.02- TOYOTAF | | 300.00 | 0.00 | -189,917,729.94 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -189,917,783.94 |
| 28-FEB-2020 | 28-FEB-2020 | NEFT-N059200379319461-058209140533- TATA CAPITAL FINANCIAL SERVICES LTD | | 80,431.00 | 0.00 | -189,998,214.94 |
| 28-FEB-2020 | 28-FEB-2020 | IMPS/PAY/LAXMI OIL AND VANASP/XXX8329/RRN:005B17901572/UNIO NSANKOFINDIA | | 0.00 | 12,000.00 | -189,986,214.94 |
| 28-FEB-2020 | 28-FEB-2020 | NEFT-N059200380135747-059209727248- ADITYA BIRLA HOUSING FINANCE LIMITE | | 12,000.00 | 0.00 | -189,998,214.94 |
| 01-MAR-2020 | 29-FEB-2020 | DEBIT INTEREST CAPITALIZED | | 2,793,039.48 | 0.00 | -202,791,254.42 |
| 28-JUN-2020 | 28-JUN-2020 | CTS CLG DEL ROYAL FEEDS | 000300554336 | 500,000.00 | 0.00 | -203,291,254.42 |
| 28-JUN-2020 | 28-JUN-2020 | BY CLG(REF.)INSTRUMENT OUT DATED STALE | 000300554336 | 0.00 | 500,000.00 | -202,791,254.42 |
| 02-SEP-2020 | 01-SEP-2020 | DEBIT INTEREST CAPITALIZED | | 16,959,313.74 | 0.00 | -219,750,568.16 |
| 07-SEP-2020 | 02-SEP-2020 | INT OF 1ST SEP 2020 REVERSED | 000300300000 | 0.00 | 100,007.00 | -219,650,561.16 |
| 30-SEP-2020 | 30-SEP-2020 | REPORTING OF 01 SEP 2020 INT REVERSED ON | 000300300000 | 100,007.00 | 0.00 | -219,750,568.16 |
| 30-SEP-2020 | 02-SEP-2020 | INTEREST OF DEFERRED MORATORIUM INTEREST | 000300300000 | 363,893.00 | 0.00 | -220,114,461.16 |
| 01-OCT-2020 | 30-SEP-2020 | DEBIT INTEREST CAPITALIZED | | 1,953,622.48 | 0.00 | -222,068,083.64 |
| 01-NOV-2020 | 31-OCT-2020 | DEBIT INTEREST CAPITALIZED | | 3,394,903.86 | 0.00 | -225,462,987.49 |
| 01-DEC-2020 | 30-NOV-2020 | DEBIT INTEREST CAPITALIZED | | 3,338,616.80 | 0.00 | -228,799,604.29 |
| 01-JAN-2021 | 31-DEC-2020 | DEBIT INTEREST CAPITALIZED | | 3,497,797.84 | 0.00 | -232,296,402.13 |
| 01-FEB-2021 | 31-JAN-2021 | DEBIT INTEREST CAPITALIZED | | 3,551,271.02 | 0.00 | -235,847,673.15 |
| 01-MAR-2021 | 28-FEB-2021 | DEBIT INTEREST CAPITALIZED | | 3,256,636.36 | 0.00 | -239,104,309.51 |
| 01-APR-2021 | 31-MAR-2021 | DEBIT INTEREST CAPITALIZED | | 3,655,348.07 | 0.00 | -242,759,657.58 |
| 01-MAY-2021 | 30-APR-2021 | DEBIT INTEREST CAPITALIZED | | 3,501,512.74 | 0.00 | -246,261,170.32 |
| 25-MAY-2021 | 25-MAY-2021 | IMPS/2021052541932383/TATA CAPITAL FINANCIAL/XXX8865/RRN:114516029178/INDU SIND BANK | | 0.00 | 1.00 | -246,261,169.32 |
| 01-JUN-2021 | 31-MAY-2021 | DEBIT INTEREST CAPITALIZED | | 3,766,135.70 | 0.00 | -250,027,305.02 |
| 24-JUN-2021 | 01-JUN-2021 | REVERSAL OF INT ON DEFERRED INT | | 0.00 | 363,892.48 | -249,753,412.53 |
| 01-JUL-2021 | 30-JUN-2021 | DEBIT INTEREST CAPITALIZED | | 2,412,095.85 | 0.00 | -252,165,508.38 |
| 07-JUL-2021 | 07-JUL-2021 | IMPS/BAJAJ+FINANCE+CF/CASHFREE/XXX 0175/RRN:118603884724/ICICI BANK | | 0.00 | 1.00 | -252,165,507.38 |
| 01-AUG-2021 | 31-JUL-2021 | DEBIT INTEREST CAPITALIZED | | 3,655,023.37 | 0.00 | -255,820,530.75 |
| 01-SEP-2021 | 31-AUG-2021 | DEBIT INTEREST CAPITALIZED | | 3,913,957.70 | 0.00 | -259,734,488.45 |

Opening Balance : 0.00 C
Total Debit Amt : 1,390,438,398.21
Total Credit Amt : 1,130,563,909.96 Dr Count : 2259
Closing Balance : -259,934,488.25 Cr Count : 963

*****END OF STATEMENT*****

| TXN DATE | VALUE DATE | DESCRIPTION | REFERENCE | DEBITS | CREDITS | BALANCE |
|-------------|-------------|--|--------------|--------------|--------------|-----------------|
| 21-NOV-2019 | 21-NOV-2019 | SHARMA-KANPUR- YES0R52019112165805347 IMPS/PAYLAXMI OIL AND VANASPGDOCK0329/RRN:932519951497A/UNO NBANKOFINDIA | | 0.00 | 30,000.00 | -199,934,745.18 |
| 21-NOV-2019 | 21-NOV-2019 | NEFT-N325190321576165-325198809081- BHAVESH SHARMA | | 60,000.00 | 0.00 | -199,994,745.18 |
| 21-NOV-2019 | 21-NOV-2019 | RRN : 005503454946/FROM : BNA CASH DEPOSIT | | 0.00 | 15,000.00 | -199,979,745.18 |
| 21-NOV-2019 | 21-NOV-2019 | NEFT-N325190321613964-325198830282- BHAVESH SHARMA | | 15,000.00 | 0.00 | -199,994,745.18 |
| 23-NOV-2019 | 23-NOV-2019 | NEFT PAYMENT CHRGs FOR 14-NOV-2019 | | 2.00 | 0.00 | -199,994,745.18 |
| 23-NOV-2019 | 23-NOV-2019 | GST | | 0.36 | 0.00 | -199,994,745.54 |
| 23-NOV-2019 | 23-NOV-2019 | NEFT PAYMENT CHRGs FOR 11-NOV-2019 | | 18.00 | 0.00 | -199,994,763.54 |
| 23-NOV-2019 | 23-NOV-2019 | GST | | 2.70 | 0.00 | -199,994,766.24 |
| 23-NOV-2019 | 23-NOV-2019 | NEFT PAYMENT CHRGs FOR 08-NOV-2019 | | 7.00 | 0.00 | -199,994,773.24 |
| 23-NOV-2019 | 23-NOV-2019 | GST | | 1.26 | 0.00 | -199,994,774.50 |
| 23-NOV-2019 | 23-NOV-2019 | NEFT PAYMENT CHRGs FOR 13-NOV-2019 | | 34.00 | 0.00 | -199,994,808.50 |
| 23-NOV-2019 | 23-NOV-2019 | GST | | 6.12 | 0.00 | -199,994,814.62 |
| 23-NOV-2019 | 23-NOV-2019 | RTGS PAYMENT CHRGs FOR 11-NOV-2019 | | 2.00 | 0.00 | -199,994,816.62 |
| 23-NOV-2019 | 23-NOV-2019 | GST | | 0.36 | 0.00 | -199,994,816.98 |
| 23-NOV-2019 | 23-NOV-2019 | RTGS PAYMENT CHRGs FOR 14-NOV-2019 | | 1.00 | 0.00 | -199,994,817.98 |
| 23-NOV-2019 | 23-NOV-2019 | GST | | 0.18 | 0.00 | -199,994,818.16 |
| 23-NOV-2019 | 23-NOV-2019 | RTGS PAYMENT CHRGs FOR 08-NOV-2019 | | 3.00 | 0.00 | -199,994,821.16 |
| 23-NOV-2019 | 23-NOV-2019 | GST | | 0.54 | 0.00 | -199,994,821.70 |
| 26-NOV-2019 | 26-NOV-2019 | ACH IF RTN CHG-35914M293-26.11- TOYOTAF | | 300.00 | 0.00 | -199,995,121.70 |
| 26-NOV-2019 | 26-NOV-2019 | CMS GST GL | | 54.30 | 0.00 | -199,995,175.70 |
| 26-NOV-2019 | 26-NOV-2019 | NEFT PAYMENT CHRGs FOR 21-NOV-2019 | | 2.00 | 0.00 | -199,995,177.70 |
| 26-NOV-2019 | 26-NOV-2019 | GST | | 0.36 | 0.00 | -199,995,178.06 |
| 26-NOV-2019 | 26-NOV-2019 | RTGS PAYMENT CHRGs FOR 21-NOV-2019 | | 1.00 | 0.00 | -199,995,179.06 |
| 26-NOV-2019 | 26-NOV-2019 | GST | | 0.18 | 0.00 | -199,995,179.24 |
| 26-NOV-2019 | 26-NOV-2019 | NEFT DR-N333190325535426-ADITYA BIRLA HOUSING FINANCE LTD-IND03000006- KANPUR | 000000654493 | 1,170.00 | 0.00 | -199,996,349.24 |
| 26-NOV-2019 | 26-NOV-2019 | NEFT DR-N333190325535379-ADITYA BIRLA HOUSING FINANCE LTD-IND03000006- KANPUR | 000000654492 | 660.00 | 0.00 | -199,997,009.24 |
| 30-NOV-2019 | 30-NOV-2019 | NET TXN: 18 FUNDS TRANS 00738660001318 | 70031 | 0.00 | 245,000.00 | -199,752,009.24 |
| 30-NOV-2019 | 30-NOV-2019 | NEFT-N334190328022562-334190865705- BMW INDIA FINANCIAL SERVICES LTD | | 125,875.00 | 0.00 | -199,877,884.24 |
| 30-NOV-2019 | 30-NOV-2019 | NEFT-N334190328022564-334190866243- TOYOTA FINANCIAL SERVICES INDIA LTD | | 118,051.00 | 0.00 | -199,995,935.24 |
| 30-NOV-2019 | 30-NOV-2019 | NET TXN: 18 FUNDS TRANS 044563700000672 | 90236 | 0.00 | 90,000.00 | -199,903,935.24 |
| 30-NOV-2019 | 30-NOV-2019 | NEFT-N334190326377582-334190860794- ADITYA BIRLA HOUSING FINANCE LIMITE | | 90,000.00 | 0.00 | -199,993,935.24 |
| 01-DEC-2019 | 30-NOV-2019 | DEBIT INTEREST CAPITALIZED | | 1,901,472.87 | 0.00 | -201,895,407.91 |
| 01-JAN-2020 | 31-DEC-2019 | DEBIT INTEREST CAPITALIZED | | 1,863,699.81 | 0.00 | -203,759,107.52 |
| 09-JAN-2020 | 09-JAN-2020 | GTS CLG DEL KRISHNA ELECTRIC INSTRUME | 000000854494 | 162,978.00 | 0.00 | -203,922,085.52 |
| 09-JAN-2020 | 09-JAN-2020 | BY CLG(RC)EXCEEDS ARRANGEMENT(OVERLINE) | 000000854494 | 0.00 | 162,978.00 | -203,759,107.52 |
| 01-FEB-2020 | 31-JAN-2020 | DEBIT INTEREST CAPITALIZED | | 2,141,675.70 | 0.00 | -205,900,784.22 |
| 25-FEB-2020 | 26-FEB-2020 | CHQ DEP-KANPUR-AXIS | 00000045600 | 0.00 | 2,500,000.00 | -203,400,784.22 |
| 25-FEB-2020 | 26-FEB-2020 | CHQ DEP-KANPUR-PNB | 000000337111 | 0.00 | 2,500,000.00 | -200,900,784.22 |
| 27-FEB-2020 | 27-FEB-2020 | RTGS CR-ANDB0000747-MUEZ HEST INDIA PVT LTD-LAXMI OIL AND VANASPATI PVT LTD-ANDBR5202022700326174 | | 0.00 | 1,621,628.00 | -199,279,356.22 |
| 27-FEB-2020 | 27-FEB-2020 | NET TXN: NET9KG FT-007384600001318- 058209140531 | 287872 | 615,000.00 | 0.00 | -199,894,356.22 |
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-3701059152-02.12- TOYOTAF | | 300.00 | 0.00 | -199,894,656.22 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -199,894,710.22 |
| 28-FEB-2020 | 28-FEB-2020 | ECS (IF RTN CHGS-BFL LOAN-02.12- CMS GST GL | | 300.00 | 0.00 | -199,895,010.22 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -199,895,064.22 |
| 28-FEB-2020 | 28-FEB-2020 | ECS (IF RTN CHGS-BFL LOAN-04.12- CMS GST GL | | 300.00 | 0.00 | -199,895,364.22 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -199,895,418.22 |
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-3708890726-05.12- HDFCBAN | | 300.00 | 0.00 | -199,895,718.22 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -199,895,772.22 |
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-380359429-05.12- RLDANAX | | 300.00 | 0.00 | -199,896,072.22 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -199,896,126.22 |
| 28-FEB-2020 | 28-FEB-2020 | ECS (IF RTN CHGS-BFL LOAN-05.12- 45760137 | | 300.00 | 0.00 | -199,896,426.22 |
| 28-FEB-2020 | 28-FEB-2020 | CMS GST GL | | 54.00 | 0.00 | -199,896,480.22 |
| 28-FEB-2020 | 28-FEB-2020 | ACH IF RTN CHG-3878786926-08.12- | | 300.00 | 0.00 | -199,896,780.22 |

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The Appellant during pleadings tried to highlight the balance figures mentioned against the transaction date for December 2019/ value date of 30.11.2019

emphasising that the balance amount exceeding the cash credit limit of Rs. 20 Cores. We have already noted that the date of default has been indicated as 28.02.2020 and as per the statement of accounts on 28.02.2020 the outstanding balance shown in statement was Rs. 19,99,98,214.94/- which is lower than the cash credit limit of Rs. 20 Crores.

56. However, on the transaction date of 01.03.2020/ value date of 29.02.2020 as per statement of accounts, the interest was capitalised of Rs. 27,93,039/- and the outstanding balance became Rs. 20,27,91,254.42/-. It is the case of the Appellant that although on 28.02.2020 amount was due but it was payable on 01.03.2020 and hence, the default took place accordingly.

57. We have already noted earlier from the submissions of the Appellant is that the instalment became due on 01.03.2020 and the RBI Circular dated 27.03.2020 moratorium was permitted for instalment between 01.03.2020 to 31.05.2020, and this moratorium period and was later enhanced from 01.06.2020 to 31.08.2020 vide RBI/2019-20/244 Circular dated 23.05.2020.

58. We have already noted the content of Part IV of the application mention the date of default as 28.02.2020 and date of NPA as 20.07.2020 and further mentioned that loan was recalled vide letter dated 27.08.2020.

59. We would like to take into account the loan recall notice dated 27.08.2020 mentioned by the Appellant in Part IV of the application which reads as under :-

ANNEXURE A-15 (Colly³⁷⁴

BY REGISTERED POST A.D./SPEED POST/COURIER/E-MAIL

YES BANK

Date: August 27, 2020

To,
Laxmi Oil & Vanaspati Private Limited ("Borrower")
704, Kan Chambers, 7th Floor, 14/113,
Civil Lines, Kanpur, Uttar Pradesh- 208002

Dear Sir,

Subject: Laxmi Oil & Vanaspati Private Limited - Loan Recall Notice

1. YES Bank Limited (hereinafter referred to as the "Bank"), at the request of **Laxmi Oil & Vanaspati Private Limited**, incorporated in 2003 and having its registered office at 704, Kan Chambers, 7th Floor, 14/113, Civil Lines, Kanpur, Uttar Pradesh- 208002 (hereinafter referred to as "the Borrower"), granted working capital facility aggregating to INR 20,00,00,000/- (Rupees Twenty Crore only) (hereinafter referred to as the "Facility") to the Borrower pursuant to Facility Letter No. YBL/DEL/FL/2000/2016-17 dated March 24, 2017 amended/renewed vide Facility Letter bearing YBL/DEL/FL/2100/2017-18 dated February 15, 2018 and YBL/DEL/FL/0577/2019-20 dated July 24, 2019 (hereinafter collectively referred to as "Facility Letters") and according to the terms and conditions of the Master Facility Agreement dated March 29, 2017 amended and supplemented from time to time and detailed in Schedule I (hereinafter collectively referred to as the "Facility Agreement"). The Facility Letters and the Facility Agreement are hereinafter collectively referred to as the "Agreements".
2. Detailed particulars of the Facility, the amount(s) sanctioned and the Agreements/security/finance documents executed in relation to the Facility are described and mentioned in Part A of Schedule-I hereto. The Facility is, *inter alia*, secured by the securities/security interest, more particularly described in Part B of Schedule I hereto.
3. One of the terms and conditions of the Agreements required the submission of stock statement by the Borrower with the Bank on monthly basis, without any delay. However, the Borrower did not honour the terms and conditions of the Agreements and neglected in submitting the stock statements with the Bank and the same is pending since January 2020, resulting in the account of the Borrower being declared as NPA on July 20, 2020 in accordance with extant RBI guidelines. In such circumstances, the Bank has become entitled to and does hereby recall the Facility and declare the Facility as due and payable by the Borrower to the Bank forthwith. Accordingly, we hereby call upon you the Borrower and demand of you to pay to the Bank at its office at 48, Nyaya Marg, Chanakyapuri, New Delhi

Page 1 of 7



Northern Regional Corporate Office: **YES BANK Limited**, 48, Nyaya Marg, Chanakyapuri, New Delhi 110 021, India.

Tel: +91(11) 6656 9000

Regd. & Corporate Office: **YES BANK Limited**, YES BANK Tower, IFC 2, 15th Floor, Senapati Bapat Marg, Elphinstone (W), Mumbai 400 013, India.

Tel: +91 (22) 3366 9000 Fax: +91(22) 2421 4500

Website: www.yesbank.in Email: communications@yesbank.in CIN - L65190MH2003PLC143249



- 110021, on immediate receipt of this notice, the outstanding amount under the Facility together with interest, compound interest, liquidated damages and other charges the particulars of which are set out in Schedule-II hereto together with further interest and other charges thereon at the contractual rates upon the footing of compound interest until payment/realization.
4. In case you, the Borrower fail to make the payments as aforesaid within 7 days from the date of receipt of this notice, we shall be constrained to take such steps and measures as may be permissible under the law (including enforcement of any or all security created in favor of the Bank) for recovery of all the monies due and payable by you, more particularly mentioned in Schedule- II hereto, at your own risk as to the costs and consequences.
 5. Please note that this notice is issued without prejudice to other rights and remedies available to us in law or in equity against the Borrower or guarantors or the security providers or any other persons for recovery of the outstanding amount.

In the meantime please acknowledge receipt.

Yours faithfully,



Authorized Signatory
YES BANK Limited

60. From Part 3 of the above loan recall notice, it is seen that it has been alleged that the Respondent did not honour the terms and conditions of the agreement and neglected to submit the 'stock statement' to the bank, which was pending since January, 2020 resulting in accounts of borrowers being declared as NPA on 20.07.2020 in accordance with the RBI Guidelines.

It further stated that in these circumstances bank has become entitled to recall the facilities and declare the facility as due and payable and accordingly the bank called upon the Respondent to pay the bank the outstanding amount under

the facility together with the interest etc., within seven days from the date of receipt of the notice.

Thus, the reason mentioned in the loan recall notice and resultant converting the account of the Respondent as NPA, was non submission of stock statement and not of default of the amount as noted from the above quoted letter.

61. A stock statement is actually a business statement that provides information to the bankers on the value and quality of stock related transactions. Perhaps these are required since bank sometimes give loan with specific margin and company need to maintain stock with the value of the margin.

62. However, as per the relevant definitions of the Code, which we have discussed in earlier part, the default is required to take place with reference to debt which is outstanding and become payable. Normally a loan recall notice mentions all the details including reasons for default and is a formal communication from the lender requesting the borrower for repayment of outstanding loan balance.

63. In the background of above details, we note that the alleged date of default has been mentioned as 28.02.2020 (it should have been 29.02.2020 being leap year) as the Appellant mentioned that the instalment become due on the last date of the month and to be payable on 01.03.2020 and as per RBI Circular dated 27.03.2020, the moratorium started from 01.03.2020 for three months which was further extended for further three months. Thus the Respondent was covered

under RBI guidelines and the default could not have been taken as 28.02.2020 or even on 01.03.2020 due to RBI Guidelines and subsequently due to Section 10 A of the Code w.e.f. 25.03.2020.

64. We have already seen that as per Part IV the date of NPA was 20.07.2020 and the date of loan recall notice was 27.08.2020 and as such both the dates falls within the stipulated period as provided under Section 10A of the Code dated 25.03.2020.

65. Arguments of the Appellant that the Corporate Debtor is not entitled to take protection of the RBI letter dated 27.03.2020 r/w 23.05.2020 in addition to Section 10A of the Code, is not convincing and cannot be accepted. The intentions of the letters of RBI as well as the introduction of Section 10A through amendment Act of 2020 was to protect the business from the financial distress adversely affected due to Covid 19 Pandemic and not to push such Corporate Debtor into Insolvency & Liquidation.

66. The Appellant, therefore, was not entitled to initiate the CIRP in the given background of the facts as well as various RBI guidelines and the provisions of Section 10 A of the Code.

67. Based on above analysis and considering all legal and factual issue raised by the Appellant, we are unable to accept any of his pleas and the appeal, therefore, deserves to be rejected. However, the Appellant shall have all the legal recourse and remedies as available in the law, if he choose to avail, to recover his

money from the Respondent . We also note that IBC is meant for sustaining the Corporate Debtor to the extent possible and not to unnecessary send the Corporate Debtor into CIRP or liquidation.

68. In fine the Appeal fails and stand dismissed. No Costs. Interlocutory Application(s), if any, are Closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

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