



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

(Through physical/ web based video conferencing platform)

CP (IB) No.117/BB/2022

Order U/s. 7 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

Indian Bank

Having Corporate Office at:
254-260 Avvai
Shanmugam Salai, Royapettah,
Chennai-600014

Represented by Shri Bheem Prasad N,
Chief Manager, Indian Bank,
Stressed Assets Management Branch
No. 10, 1st Floor, Indian Bank Buildings
K.G. Road, Bangalore- 560009

...Financial Creditor/Petitioner

VERSUS

M/s. Mantri Developers Private Limited

Having Registered Office at:
Mantri House, #41,
Vittal Mallya Road,
Bengaluru -560001

... Respondent/Corporate Debtor

Order delivered on: 10/12/2024

Coram:

Hon'ble Mr. K Biswal, Member (Judicial)

Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri H.R. Katti

For the Respondent : Shri Anish Acharya



O R D E R

Per: K. Biswal, Member (Judicial)

1. The present Petition has been filed by Indian Bank on 23/05/2022, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 (herein after referred as the Petitioner/ Financial Creditor), for *inter alia*, seeking to initiate Corporate Insolvency Resolution Process in respect of M/s Mantri Developers Pvt. Ltd. (hereinafter referred to as 'Corporate Debtor/Respondent') for the default amount of Rs. 153,99,35,374 (Rupees One hundred and Fifty Three Crores Ninty Nine Lakhs Thirty Five Thousand Three Hundred and Seventy Four Only) as on 05/03/2022 as per part IV of Form No. 1.
2. In Part IV of Form No. 1 filed with Petition, the following information is given:

Amount claimed to be in Default and the date on which the Default occurred. (Attach the working for Computation of Amount and Days of Default in Tabular Form)	Amount claimed to be in Default: Rs. 153.99 Crores as on 05.03.2022 with further interest accruing thereon.			
	Date on which default occurred: 28/09/2020 (i.e., Date of NPA)			
	Account Type	Ledger Balance as on NPA Flagging Date (i.e. 28.09.2020)	Uncharged Interest + charges (Up to 05.03.2022)	Total
	Term Loan	110,73,74,085	43,26,28,918	153,99,35,374
	Less: Repayment on 07.06.21	67,629.00		
	Total	110,73,06,456	43,26,28,918	153,99,35,374
That the amount due with interest up to 30.04.2022 comes to Rs. 155,68,40,798. Detailed statement of account of Term Loan is annexed as Annexure D to the Petition.				



3. The facts of the case are discussed below:

- i. The Petitioner/ Financial Creditor is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its corporate office at 254-260 Avvai Shanmugam Salai Royapettah, Chennai- 600014 and inter alia having its Branch at Indian Bank, Stressed Assets Management Branch, No. 10, 1st Floor, Indian Bank Buildings, K. G. Road, Bengaluru-560009.
- ii. The Respondent/ Corporate Debtor, incorporated on 06.12.1990 and engaged in real estate development business. The Respondent applied for Term Loan under All Bank Property Scheme to Industrial Finance Branch, Allahabad Bank, which is now merged with Indian Bank w.e.f 01.04.2020 vide gazette notification dated 04.03.2020, the said notification has been marked and annexed as **Annexure C** to the Petition.
- iii. Term Loan for Rs. 112,00,00,000/- (Rupees One hundred and Twelve Crores Only) was sanctioned by letter dated 19.08.2016 and renewed vide letters dated 20.01.2018 and 26.09.2019. As per sanction letter dated 19.08.2016, the loan facility was sanctioned as under:

Account Type	Limit (Rs. In Crore)	Date of Disbursement
Term Loan	112.00	29.06.2016
Total	112.00	

Repayment: Repayable in 8 quarterly instalments after a moratorium period of 36 months from the date of first disbursement. Interest in the account will be serviced as and when charged.

- iv. As security to avail the Term Loan, the Respondent mortgaged three immovable properties, located in Pune, Bangalore and Hyderabad, in favour of the Petitioner. In addition, Mantri Mansion Private Limited and Mantri Homes Private Limited executed corporate guarantees dated 19.09.2016 in favour of the Petitioner. Personal Guarantee by



Mr. Sushil Pandurang Mantri, dated 19.09.2016 was also executed. The details of the properties mortgaged is marked as **Annexure G** to the Petition.

- v. The Petitioner classified the debt as Non-Performing Asset (NPA) on 28.09.2020 as a consequence of default by the Respondent. The Petitioner in view of default of payment by the Respondent, invoked provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') and issued notice dated 04.08.2021 to the Respondent under Section 13(2) and 3 notices dated 19.01.2022 under Section 13(4) of SARFAESI Act to take symbolic possession of mortgaged properties located in Pune, Bengaluru and Hyderabad. Further, the Petitioner has also issued Show Cause Notice dated 07.03.2022 to Respondent and Guarantors. The copy of notice is marked and annexed as **Annexure K** to the Petition.
- vi. The Petitioner filed instant Application under Section 7 of IBC, 2016 seeking to initiate CIRP against the Respondent and the Application came to be numbered as C.P. No. 117/BB/2022. However, there was a similar application C.P. (IB) No. 94/BB/2022 filed against the same Respondent under Section 7, which was filed by M/s. India Bulls Housing Finance Limited, which was admitted vide order dated 28.03.2023. In view of said admission, instant petition was disposed of vide Order dated 19.06.2023 and the Petitioner was granted liberty to file his claims before IRP appointed in CP (IB) No. 94/BB/2022.
- vii. The Respondent filed an appeal against the admission Order dated 28.03.2023, in CP (IB) No. 94/BB/2022 before the National Company Law Appellate Tribunal ('NCLAT') and it was set aside vide order dated 07.08.2023 in view of the settlement arrived between the Respondent and M/s. India Bulls Housing Finance Limited. Consequently, in view of this development, the Petitioner sought to recall the order dated 19.06.2023 that had disposed of the instant Petition and an I.A. No.



314/2024 was filed to restore C.P. (IB) No. 117/BB/2022. The same was allowed vide order dated 20.08.2024.

4. The Ld. Counsel for the Respondent has filed objections vide Statement of Objections, dated 19/12/2022 and Diary No. 5504, and Additional Statement of Objection, dated 23/10/2024 and Diary No. 5999, stating as under:

- i. The Respondent submits that in spite of making regular repayments, the loan account was wrongly classified as NPA. The Respondent was making regular interest payments, however due to the slowdown in the real estate industry, the Respondent requested for a re-schedulment. However, due to the merger of Allahabad Bank with Indian Bank the same was not possible.
- ii. The Respondent submits that the total liability is an exaggerated sum and the same is disputed. The interest and high administrative charges imposed by the Petitioner is unwarranted and in contravention of the Terms of Loan Agreement.
- iii. Aggrieved by the acts of Petitioner, the Respondent instituted Com OS 887/2021 before Hon'ble LXXXVI Additional City Civil and Sessions Court and Designated Commercial Court at Bangalore which was dismissed vide order dated 03.12.2022. However, the Respondent has challenged the dismissal order.
- iv. It is submitted by the Respondent that settlement talks were ongoing between the two parties, wherein Respondent made a deposit of INR 10,70,00,000 which was accepted by the Petitioner. However, Petitioner failed to execute the settlement and has now initiated this instant Petition.
- v. The Respondent submits that the subject matter of this Petition is already under dispute in a suit pending before the Additional City Civil and Sessions Judge, Bengaluru in OS No. 26328/2023, filed on 16.09.2023, seeking resolution of contractual and financial issues arising out of the transaction.



- vi. The Respondent submits that under Section 8(2) clause 'a' of IBC, 2016, the Corporate Debtor is entitled to bring notice of the NCLT that a pre-existing dispute exists between the Parties regarding the transaction. Further, the Respondent has referred to a case by the Hon'ble Supreme Court in *Mobilox Innovation Pvt. Ltd. v. Kirsa Software Pvt. Ltd.* ((2017) ibclaw.in 01 SC), wherein it was held that where there is evidence of a pre-existing dispute, the NCLT must reject an application filed under Section 9 of the IBC, 2016. The same principle applies here as the dispute is actively being adjudicated in a competent civil court.
5. Heard the Ld. Counsel for the Petitioner and the Respondent and perused the pleadings on record.
6. On the Objection raised by the Respondent stating that the Petition is liable to be rejected due to a pre-existing dispute, it should be noted that a pre-existing dispute is relevant only under Section 9 and does not present a bar for initiation of CIRP under Section 7 of the IBC, 2016. Therefore, the Respondents have raised an altogether irrelevant objection which is beyond the provisions of Section 7 of the IBC, 2016. The Respondents in their objections dated 23.10.2024 have wrongly referred to Section 8 (2) (a) of the IBC, 2016. It has not even been realised by the Respondents that the heading of Section 8 itself reads as under:

“Section 8: Insolvency resolution by Operational Creditor”

Thus, the Respondents have cited wrong section which relates only to Operational Creditor and is not relevant for Financial Creditor, since there was no such condition under Section 7 of the IBC, 2016. Moreover, the Respondents have cited the judgement of Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited* (*supra*) which is again related to the Application under Section 9 for Operational Creditor only. Thus, the Respondents have displayed a complete ignorance of the basic provisions of the IBC, 2016 and made an irrelevant and untenable submission in their objections. In fact the provision of Section



7 of the IBC, 2016 has been further clarified by the Hon'ble Supreme Court of India in the case of *Innoventive Industries Ltd. vs. ICICI Bank and Anr.* ((2017) ibclaw.in 02 SC), in which it has been contended as under:

“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. **It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.**”*

Therefore, as per provisions of IBC, 2016, the petition under Section 7 is liable to be admitted even if there is a pre-existing dispute with regards to the debt.

7. In the case at hand, it is noticed that, the Petitioner has disclosed **date of default as 28.09.2020**, in the part IV of Form no. 1. This date of default is also the date on which the Petitioner declared the Respondent's account as NPA. The Petitioner has also attached Record of Default in Form 'D' issued by Information Utility dated 19.06.2022, that states the date of default to be 13.02.2021 at **Annexure A3** on pg. 644 of the Petition.



8. However, vide Memo for Production of Additional Documents filed by Petitioner, Diary no. 6436 dated 14.11.2024, has submitted a revised Record of Default by Information Utility, that states the date of Default to be 28.12.2019. Since it was consequent to the query raised by this Tribunal regarding the 'date of default' falling within the period specified under Section 10A of the IBC, the Petitioner was asked to explain the basis of this change mentioned in Form 'D' i.e., Record of default. The matter was reserved for orders on 18/11/24, and both the Parties were granted liberty to file written submissions, if they so desire, within a week. Subsequently, the Petitioner in the written submissions, filed vide diary no. 6643 dated 25.11.24, has made a claim that due to wrong interpretation and misunderstanding of the records, the date of default was held to be 28.09.2020 and that on re-verification, the date of default is found to be 28.12.2019 and the same was submitted to the Information Utility and revised Record of Default was issued which was filed on 14/11/24. However, no legal justification was given as to how the '**Event of Default**' occurred on 28/12/19; so that it can be treated as the acceptable 'Date of Default'.
9. In the light of facts of the case and pleadings of the parties as briefly stated above, the issue for consideration in this Application is as to whether default occurred during the period of section 10A of the IBC, 2016?
10. Before we proceed to examine the contentions of the parties it is relevant to go through section 10 A of the IBC, 2016. Which is as follows:

"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.”

11. The period specified in Section 10A of the Code was subsequently extended by Government Notification up to 24.03.2021 vide Notification number S.O 4638 (E) dated 22nd December, 2020. Therefore, in accordance with this Section, no proceedings under Section 7, 9 and 10 of the IBC can be initiated against the Corporate Debtor for the default which has occurred between the period from 25.03.2020 till 24.03.2021. The legislative intent is reflected in the Proviso to Section 10A of the Code which stipulates that “*no application shall ever be filed.....*” for initiation of the CIRP “*for the said default occurring during the said period*”. It is **abundantly** clear that the intention of the legislature is to completely bar the institution of any application **ever** for initiation of CIRP for the default having occurred during the period 25.03.2020 till 24.03.2021.
12. It is not out of place to mention here that the Form-1 to be filed with the Application under Section 7 is a mandatory requirement in accordance with the provisions of Section 7 (2) of the Code read with Regulation 4(1) of the IBBI (Application to Adjudicating Authority) Rules, 2016. In Part IV of the Form-1 there is a specific column wherein the ‘Amount claimed to be in default and the date on which the default occurred’ must be clearly mentioned in Item No.2. Thus, the Form-1 is a statutory form and the declarations made in the columns are the most relevant and the starting point for the initiation of the CIRP. The Hon’ble Apex Court in the case of ***Ramesh Kymal vs. Siemens Gamesa Renewable Power Private Limited (2021) 3 SCC 224*** dated 09.02.2021 has underlined the significance of the declaration of the specific date of default in the statutory notice under Section 8 (1) for a petition under Section 9 of the IBC. It was held that once the Appellant has specified the date of default in the demand notice under



Section 8 (1) of the IBC, 2016 it cannot be allowed to be changed subsequently, as was argued in that particular case. It was further held as under:

“This attempt to set back the date of default to either 21 January 2020 or 23 March 2020 is plainly untenable for the reason that it is contrary to the disclosure made by the Appellant in the demand notice which has been issued in pursuance of the provisions of Section 8 (1) and Section 9 of the IBC. The demand notice triggers further actions which are adopted towards the initiation of the insolvency resolution process.”

Thus, the Hon’ble Apex Court has emphasised the sanctity of the Date of Default as stated in the Application and the statutory demand notice, and rejected the attempt to prepone it just to get over the embargo imposed by the provisions of Section 10A of the Code.

13. Therefore, considering that in Part-IV of the Form-1 there is a specific mention of the date of default as 28.09.2020, it is held that the default occurred within the period which has been categorically excluded under the provisions of Section 10A of the IBC 2016. Though the above referred judgement of the Hon’ble Apex Court was delivered in the context of the petition under Section 9 of the IBC, the same principal will be equally applicable for the petition filed under Section 7 of the IBC 2016 by the Financial Creditor for initiation of the CIRP. Further, the claim made in the written submissions dated 25.11.2024, diary no. 6643, regarding the ‘date of default’ being 28.12.2019 is not tenable in law, as it was without any reasonable basis and the claim was not justified. No explanation whatsoever was given as to how it can be validly claimed that the ‘Even of Default’ actually occurred on 28/12/2019 and not on 28/09/2020.
14. Moreover, in the Form-1 filed with the C.P, ‘the ‘date of default’ was mentioned as 28.09.2020 on the basis of the declaration of the Corporate Debtor’s account as NPA in accordance with Part IV of Form No. 1. Therefore, it is relevant to examine the significance of classification of a debt as NPA. A perusal of the Reserve Bank of India Master Circular on Prudential norms on



Income Recognition Asset Classification and Provisioning pertaining to Advances, reveals that the definition of NPA is given as under:

“2.1.2 A non-performing assets (NPA) is a loan or an advance where;

- i. Interest and/or instalment of principal remains overdue for a period of more than 90 days in respect of a term loan,
 - ii. The account remains ‘out of order’ as indicated at Paragraph 2.2 below, in respect of an Overdraft/Cash Credit (OD/CC),
 - iii. The bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted.
-”

Further, in Para 2.2 of the Master Circular, it is stated that an account could be treated as ‘out of order’ if the outstanding balance remains continuously in excess of the sanctioned limit/drawing power for 90 days, or there are continuously no credits for 90 days etc. Therefore, it is clear that as per the RBI Guidelines, when the interest or the principal remains unpaid or overdue for a period of 90 days in respect of the term loans, it becomes NPA and thus the Date of declaration as NPA is determined. In other words, the ‘date of default’ for the Principal and Interest would be 90 days prior to the Date of NPA and if it remains unpaid for 90 days, it is declared as NPA. **Therefore, the date of default mentioned in Part IV of Form No.1, as 28/09/2020 is in order;** as would be revealed from the discussion below.

15. In the recent decision of the Hon’ble NCLAT, Principal Bench, New Delhi dated 25.04.2024, in the case of **“Milind Kashiram Jadhav versus State Bank of India and another in Company Appeal (AT) (Insolvency) NO.1589 of 2023, [Case citation (2024) ibclaw.in 273 NCLAT]**, in which the issue regarding the NPA date being taken as ‘date of default’ was examined extensively and it was observed as under:

51.Appellant’s main arguments are that the date of default should be the date of the Loan Recall Notice (August 11, 2020) because they made payments between the NPA declaration (September 27, 2019) and the Recall Notice. ...And in such a situation the default would have fallen within the period of March 25, 2020 to March 24, 2021 and the proceedings would have been barred under Section 10A of the IBC.



52. On the other hand, Respondent's (Financial Creditor's) main arguments are that the date of NPA declaration (September 27, 2019) is the default date because prior to this date the loan remained unpaid for more than 90 days. Loan Recall Notice is an additional opportunity to pay, not a requirement for establishing default.... It also acknowledges some payments after the NPA declaration but argues they weren't enough to regularize the account and the default continued. And even highlights the rejection of the Corporate Debtor's **One-Time Settlement (OTS)** proposals as an admission of debt and default.

....

56. In adherence to Reserve Bank of India (RBI) regulations, the classification of Non-Performing Assets (NPAs) serves as a pivotal measure for maintaining the financial health and stability of the banking sector. When a borrower defaults on loan payments for a stipulated period, typically 90 days, the loan account is rightfully classified as an NPA. This classification isn't arbitrary, it's a well-defined threshold indicating a lapse in repayment obligations.

57. Considering the scenario at hand: a loan instalment due on June 30, 2019, remains unpaid. Following the regulatory protocol, on September 27, 2019, marking the 90th day of default, the loan account was rightly categorised as an NPA. This classification is not an arbitrary punishment but rather a consequence of a fundamental breach of repayment terms.

58. Upon classification as an NPA, the entirety of outstanding dues, encompassing both principal and accrued interest, becomes immediately due and payable. This measure is imperative for banks and financial institutions to safeguard their interest and maintain liquidity.

...

62. Section 3 (12) of the IBC deals with the expression 'Default' to mean non-payment of debt when whole or any part of instalment of the amount has become due and payable, **thus, when on the loan accounts being classified as NPA the whole of the debt is due and payable- it is a 'Default' under the IBC, thus, the date of NPA can be taken as**



the date of default. In fact, the default has been persisting prior to 90 days of NPA declaration date.

....

64. And in the instant case the default was occurring 90 days prior to the NPA declaration (September 27, 2019). It is difficult to accept the argument of the Appellant that this date should not be treated as the date of default.

...

70. Appellant's arguments to treat the recall date as the date of default therefore cannot be sustained, in the above mentioned background.

71. Consequently, the reliance on the date of NPA declaration (27.09.2019) by the Adjudicating Authority instead of the date of recall (18.08.2020), is therefore correct and also supported by the judicial precedents and also the facts in the instant case...

72. The Appellant/Corporate Debtor's attempt to refute this by highlighting certain payments made subsequent to the NPA classification is flawed on multiple fronts. Firstly, despite any payments made, the crucial fact remains that the loan accounts were never regularised; they continued to remain in the NPA category. Thus, the mere existence of partial payments does not absolve the Corporate Debtor from the default status...

...

*74. The loan accounts of the Corporate Debtor were officially classified as Non-Performing Assets (NPA) on September 27, 2019, following 90 days of non-payment, thereby triggering a default event. **Despite subsequent partial payments made by the borrower, the NPA status and default persisted**, indicating a continuous state of default. Consistent with established judicial precedents and the specific circumstances of the case, **the date of NPA classification serves as the valid "Date of Default" for initiating insolvency proceedings.** Even after the NPA classification, the borrower remained in default. Consequently, September 27, 2019, the date of NPA classification,*



stands as the “date of default” under the Insolvency and Bankruptcy Code (IBC), superseding any subsequent events, such as the loan recall notice issued on August 18, 2020.

[Emphasis Supplied]

16. We have carefully considered the RBI Master Circular on Prudential norms as well as the above referred judgment of Hon’ble NCLAT in the case of *Milind Kashiram Jadhav versus State Bank of India and another (supra)*, in which it is held that the date of classification of NPA is a valid and appropriate determination of the occurrence of default and also the ‘date of default’ on the part of the Corporate Debtor. Therefore, in this case also the ‘date of default’ being the date of declaration as NPA i.e., 28.09.2020, was correctly mentioned in the Form-1 filed with the C.P. As an alternative, in accordance with the RBI potential norms, if the principal/interest of the debt remains outstanding for 90 days then the declaration of the NPA is made. Therefore, the default in such case would have occurred initially 90 days prior to the date of classification as NPA which becomes 30.06.2020 in this case, which also falls within the suspension period prescribed under Section 10A of the Code.
17. **It is important to mention here that against the above mentioned Order of NCLAT dated 25.04.2024 in the case of *Milind Kashiram Jadhav versus State Bank of India and another (supra)*, a Civil Appeal No.7990/2024 was filed before the Hon’ble Supreme Court of India. The Hon’ble Apex Court vide its Order dated 02.08.2024 has dismissed this Appeal. Therefore, the decision of the Hon’ble NCLAT, Principal Bench, New Delhi in the matter *Milind Kashiram Jhadav (supra)* now stands upheld by the Hon’ble Apex Court.**
18. In view of the above discussion, any subsequent development like part payment/loan recall notice/SARFEASI notice would not change the event of default which had already occurred. This is in view of the Proviso to section 10A of IBC; due to which no application u/s.7, 9 or 10 can ever be filed if the default has already occurred during the period specified u/s.10A of the Code.



It is also clear from the above referred order of Hon'ble NCLAT in the case of Milind Kashiram Jadhav versus State Bank of India and another (supra) that once the default has occurred in the period specified under Section 10A of the Code, it cannot get shifted to the later date which is outside the specified period because of any part payment or Loan Recall Notice. The Hon'ble NCLAT in the above referred case has accepted the explanation furnished by the Respondent/ Financial Creditor, that the date of declaration of NPA could be validly considered as the 'Date of Default'; for the purposes of the Code; and the appeal filed against this NCLAT order has been dismissed by the Hon'ble Apex Court.

19. Further, in the matter of *Inakshi Sobti and Ors. vs. Starlight Systems (I) Private Limited*, CP (IB) 778/MB-IV/2023: MANU/NC/2566/2024 dated 05.01.2024, NCLT Mumbai held that as under:

"4.3.Hence, we find that this new plea of the FCs is to alter the date of default mentioned in the Main Application as the alleged date of default fell during the suspension period. If we allow this IA, it would have the effect of negating the legislative bar against filing applications for initiation of CIRP during the COVID-19 pandemic period. Further, we are conscious of the settled proposition of law that an amendment of pleading cannot be allowed which takes away the valuable defence available to the opposite side. This Adjudicating Authority cannot cause irretrievable prejudice to one of the parties, especially when the amendment sought has the effect of nullifying a statutory mandate.

4.4.....We are of the considered opinion that it shall not be a right in law for an applicant under Section 7 of the IBC to change the date of default. We need to be cautious if the change of date of default cuts the very root of maintainability of the Main Application.

4.5. Amendment of date of default in an application under Section 7 is not to be allowed for mere asking. The Hon'ble Supreme Court in Dena Bank vs. Shivakumar Reddy (supra) also observed that amendment of pleading should be allowed depending on the facts and circumstances of each case. Mentioning date of default as 05.09.2020 in Part IV of the Main Application



cannot be construed as mere error but a conscious admission. Allowing the amendment as prayed for in this IA would defeat the very purpose of Section 10A of the IBC and would render it redundant, amounting to abuse and misuse of the process of law. We hold that no amendment to an application under Section 7 of the IBC nullifying a statutory mandate can be allowed by the Adjudicating Authority. Accordingly, we are of the considered view that the above IA is only to be dismissed.

20. The aforementioned Order has also been upheld by the NCLAT in its order dated 03.07.2024 (MANU/NL/0477/2024), therefore, it is clear that no amendment in Part IV Form 1 in the instant Petition can be allowed. Further, it is clear that Nesl has issued Record of Default electronically based on the information given by the Financial Creditor itself. In the instant Petition, it is clear from the Written Submission, diary no. 6643 dated 25.11.24, submitted by the Petitioner that only on raising the query by this Tribunal regarding the date of default in Form-1 falling under Section 10A of the IBC Code, the Petitioner has come up with the different alternative claim as to date of default, to somehow wriggle out of the embargo imposed by Section 10A of the Code. Thus, we are of the view that 28.09.2020, the date of default mentioned in Part IV of Form No. 1 is the correct date of default being also the NPA date in accordance with the RBI Prudential Norms.
21. Further, it is pertinent to highlight two crucial documents submitted by the Petitioner Bank with the C.P. filed on 23/05/2022. First, the Show Cause Notice dated 07.03.2022, which appears on page 369(A) of the Petition and is marked as **Annexure K**, explicitly states that the NPA date is 28/09/2020. Second, a Letter dated 07.07.2020, located on page 360 of the Petition, issued by the Petitioner Bank to the Corporate Debtor, unequivocally confirms that as on that date, the Corporate Debtor's Loan Account remained standard and was not classified as NPA, in accordance with the prevailing guidelines of the Bank and the Reserve Bank of India.
22. Consequently, these two documents conclusively established that the date of NPA being the date of default is 28.09.2020, as indicated in Part IV of Form No.1. Therefore, the Petitioner's assertion that the default occurred on



28.12.2019 is contradictory to its own submissions made in the Petition itself. Moreover, the Petitioner has failed to give any justifications or evidence for this claim that the date of default was actually 28/12/2019. Further, this alternative claim has been made for the first time on 25/11/2024 whereas the C.P. had been filed on 23/05/2022. As such, the Petitioner's claim is legally untenable and unacceptable.

23. In respect of the attempt to change the date of default out of the period specified under section 10A, the following decisions of NCLAT/NCLT are also found to be relevant. In these orders, such attempts to shift date of default out of the period specified under section 10A on one pretext or the other has been rejected:

- i) The Hon'ble NCLAT in the matter of "***SLB Welfare Association v. PSA Impex Limited and others, C.A (AT) (INS) NO.905/2022 order dated 04.11.2022*** held that "the reason given by Adjudicating Authority for rejecting argument of Section 10A was based on alleged acknowledgement letter dated 03.06.2021 received from Corporate Debtor when the 'date of default' given by Operational Creditor in Section 9 Application is 31.03.2020, the mere fact that acknowledgement has been given by Corporate Debtor on 03.06.2021 accepting the debt, shall not change the 'Date of Default'. We, thus, do not agree with the reasons given by the Adjudicating Authority that since acknowledgement is dated 03.06.2021, the 'date of default' will become 0306.2021. The date of default and acknowledgement are two different events and date of default is not dependent on acknowledgement of debt".
- ii) The coordinate Bench of NCLT, New Delhi vide ***order dated 31.10.2023 in the case of "M/s. DB Power Limited vs Kreate Energy (I) Private Limited, in CP (IB) No. 521/ND/2022*** has held that "the submissions of the applicant that the dates of acknowledgement of liability towards the operational debt, the date of the last part payment, the date of issuance of cheque, the date of dishonour of the said cheque the date of sending the demand notice, and consequential



failure of the Respondent to pay the operational debt, having fallen after the period stipulated under Section 10A of the Code ie., after 24.03.2021 and each of the said event gave rise to a fresh cause of action, being new date of default on the part of the Corporate Debtor to pay the operational debt to the Applicant, for preferring the present proceedings under Section 9 of the Code, 2016 cannot be accepted.”

24. Moreover, this Tribunal in some recent orders has also followed above referred judgements rendered by the Hon’ble NCLAT, Principal Bench, New Delhi in the case of *Milind Kashiram Jadhav versus State Bank of India and another (supra)* and the same view has been taken regarding the Proviso to Section 10A of IBC, 2016, as discussed above. The instances of orders by this Tribunal in the similar facts and circumstances related to the interpretation of the Proviso to Section 10A are as under:

- i. Bank of Baroda Vs. Virginia Developers Private Limited filed in C.P.(IB)No.65/BB/2023 U/s.7 of IBC, 2016; Order dated 16.07.2024 (MANU/NC/3659/2024).
- ii. State Bank of India Vs. Vivimed Labs Limited filed in C.P.(IB)No.167/BB/2022, U/s.7 of IBC, 2016; Order dated 30.07.2024 (Case citation (2024) ibclaw.in 671 NCLT).

25. Therefore, as 28.09.2020, being the date of default as per Part IV of Form No. 1 filed with the Petition; falls within the period of Section 10A of IBC, 2016 i.e., 25th March 2020 to 24th March 2021, it is held that the default occurred within the period which has been categorically excluded under the provisions of Section 10A of the IBC 2016.

26. The facts of this case clearly establish that the default had occurred in the period specified under Section 10A of the IBC, 2016, and therefore no application for initiation of CIRP can ever be filed in respect of this date of default.

27. For the aforesaid reasons, circumstances of the instant petition and the settled position of Law on the issue, we are of considered opinion that the instant petition filed under Section 7 of the IBC 2016 is in respect of the default which has occurred during the period stipulated under Section 10A



of the Code and therefore the petition filed for initiation of the CIRP is not maintainable and not tenable in law. Therefore, **the C.P bearing C.P (IB) No.117/BB/2022 is liable to be dismissed.** However, it is made amply clear that this Order will not come in the way of any other legal remedies for the recovery of the debt if so advised, (including the pending proceedings under SARFAESI Act which is mentioned at Para 3 (v) above) and the Petitioner is free to pursue all modes of recovery permissible under law.

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-

(K. BISWAL)
MEMBER (JUDICIAL)