

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**the Insolvency and Bankruptcy Code, 2016)**  
**(Through Physical/Video – Conferencing/Hybrid Mode)**

**CP (IB) No.167/BB/2022 &**  
**I.A.No. 634/2023**  
**U/s. 7 of the IBC, 2016**  
**R/w Rule 4 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**State Bank of India,**  
Stressed Asset Management Branch,  
Secunderabad, D.No. 5-9-76,  
2<sup>nd</sup> Floor, Prabhat Towers,  
Opp. SBI, Amaravathi LHO,  
Chapel Road,  
Gunfoundry, Hyderabad- 500 001.

... Financial Creditor/Petitioner

**VERSUS**

**Vivimed Labs Limited,**  
Registered office at:  
Plot No. 78-A, Kolhar Industries Area,  
Bidar, Karnataka- 585 403.

...Respondent/Corporate Debtor

**Order delivered on: 30<sup>th</sup> July, 2024**

**Coram:** Hon'ble Mr. K. Biswal, Member (Judicial)  
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Shri Sreenath V.K., Adv  
For the Respondent : Shri Saji P. John., Adv

**O R D E R**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition is filed on 16.08.2022, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 4 of the I&B (Application to Adjudicating Authority) Rules 2016, by State Bank of India (hereinafter referred as 'Financial Creditor/Petitioner') inter

alia seeking to initiate Corporate Insolvency Resolution Process in respect of Vivimed Labs Limited (hereinafter referred as 'Corporate Debtor/Respondent') for a total outstanding default amount of Rs. 241,40,62,023.40/- (Rupees Two Hundred and Forty-One Crore Forty Lakhs Sixty-Two Thousand and Twenty-Three and Paise Forty Only) as on 30.06.2022 together with interest and other cost and expenses incurred and to be incurred.

2. The facts of the case are discussed below:

- a. It is submitted that the financial creditor, State bank of India is a corporation constituted under the State bank of India Act, 1955. The erstwhile State Bank of Hyderabad (SBH) and the State Bank of India, Industrial Finance Branch, Hyderabad had sanctioned various credit facilities such as credit facilities and term loan as well as non-fund-based credit facilities such as letters of credit and bank guarantee to the Corporate Debtor for carrying out its business activities under various sanction letters. Pursuant to order dated 22.02.2017 issued by the Government of India, sanctioning the Acquisition of State Bank of Hyderabad by State Bank of India in terms of sub section (2) of Section 35 of the State Bank of India Act, 1955, the accounts of State Bank of Hyderabad stood transferred and merged with State Bank of India w.e.f from 01.04.2017. Thereafter, the said account of the corporate debtor has been transferred and maintained at State Bank of India, Stressed Assets Management Branch-Secunderabad, 5-9-76, 2<sup>nd</sup> Floor, Prabhat Towers, Opp. SBI Amaravathi LHO, Chapel Road Gunfoundry, Hyderabad for initiating recovery proceedings.
- b. It is submitted that the Corporate Debtor availed financial assistance from SBH under Sanction Letter dated 24.01.2004 and the limits sanctioned therein were Rs. 10,95,00,000/-. Thereafter, at the request of Corporate Debtor seeking renewal-cum- enhancement of the financial assistance, vide sanction letter dated 10.08.2004 the limits were enhanced to Rs. 19,40,50,000/-. Further, at the request of the corporate debtor, vide sanction letter dated 15.07.2005 the limits were enhanced subsequently to Rs. 28,40,00,000/-

- c. Thereafter, the corporate debtor approached SBH for Term Loan-III for an amount of Rs. 7,95,00,000/-, Term Loan IV of Rs. 12,05,00,000/- and a corporate loan of Rs. 10,00,00,000/- and the same was sanctioned by SBH vide sanction letter dated 07.10.2006. thereafter, at the request of corporate debtor, SBH vide its sanction letter dated 27.12.2006 renewed-cum- enhanced working capital limits to Rs. 44,50,00,000/-
- d. Further, at the request of the corporate debtor for enhancement of working capital, the same was accepted by SBH and accordingly financial assistance to a tune of Rs. 88,50,00,000/- was sanctioned vide sanction letter dated 12.05.2008.
- e. It is submitted that the corporate debtor approached SBH and requested inter-alia (i) Adhoc FUBD limits of Rs. 5,50,00,000/- for a period of 120 days in addition to the existing limits (ii) Forward contract limits by USD 5 Million with NIL margin. The said request was accepted by the SBH and accordingly financial assistance was sanctioned vide Sanction Letter dated 18.08.2009.
- f. Thereafter, corporate debtor approached SBH requesting enhancement of limits and the same was accepted and sanctioned vide sanction letter dated 24.02.2010 enhancing the limits to Rs. 109,64,00,000/-.
- g. It is submitted that the corporate debtor further approached SBH requesting Adhoc FUBD limits of Rs. 20,00,00,000/- and the same was accepted by SBH and accordingly the financial assistance was sanctioned vide Sanction letter dated 29.06.2010 for enhanced the limits to Rs. 129,25,00,000/-
- h. Further, the corporate debtor approached SBH requesting renewal and enhancement of working capital limits and the same was enhanced to Rs. 176,00,00,000/- vide sanction letter dated 14.02.2011.
- i. The corporate debtor vide letter dated 24.02.2011 requested SBH for Short Term Corporate Loan of Rs. 20,00,00,000/- and the same was sanctioned vide letter dated 28.03.2011.
- j. Thereafter, working capital limits was enhanced by SBH to Rs. 189,98,00,000/- vide sanction letter dated 29.03.2012.

- k. Further, corporate debtor requested for sanction of Corporate Loan of Rs. 45,00,00,000/- and one-time Adhoc FUBD/FDBP/over-draft against export bills of Rs. 25,00,00,000/- sent on collection. The said request was accepted, and accordingly SBH vide sanction letter dated 30.07.2013 has enhanced the limits to Rs. 257,48,00,000/-.
- l. Moreover, SBH has sanctioned cash credit limits of Rs. 5,00,00,000/- and letter of credit and Bank Guarantee limits of Rs. 75,00,000/- to M/s Klar Sehen Private Limited vide sanction letter dated 25.09.2014. The terms and conditions of sanction was accepted by M/s KlarSehen Private Limited and corporate debtor. it is submitted that SBH has sanctioned Term Loan of Rs. 1,80,00,000/- to M/s KlarSehen Private Limited vide Sanction Letter dated 05.12.2014 and overall limits have been enhanced from Rs. 5,75,00,00,000/- to Rs. 7,55,00,00,000/- and the terms and conditions of sanction was accepted by the Corporate Debtor.
- m. Further, corporate loan of Rs. 40,00,00,000/- was sanctioned by SBH and the limits were enhanced to Rs. 389,62,00,0000/- vide sanction letter dated 27.12.2014.
- n. It is submitted that the Corporate debtor approached SBH for Corporate Loan of Rs. 38,00,00,000/- and the same was sanctioned by SBH vide sanction letter dated 19.12.2015. Thereafter, corporate debtor approached SBH requesting for renewal of working capital limits and fresh corporate loan of Rs. 70,00,00,000/-. It is submitted that the Corporate debtor approached SBH requesting extension of Adhoc FUBD/FDBP/Overdraft against export bills and roll over of CL-3 by 6 months and SBH vide its sanction letter dated 28.05.2015 sanctioned the said facilitates. Further, corporate debtor approached SBH requesting for FDCL limit to a sum of Rs. 45,00,00,000/- FDCL limit to a sum of Rs. 70,00,00,000/- and the same was sanctioned by SBH vide sanction letter dated 22.11.2016.
- o. It is submitted that the corporate debtor approached financial creditor for working capital limits of Rs. 25,00,00,000/- and the same was sanctioned by the financial creditor vide sanction letter dated 29.03.2012. thereafter, enhancement was sought by the corporate

debtor for enhancement of working capital to a tune of Rs. 59,07,00,000/- and the same was sanctioned by Sanction Letter dated 30.01.2013.

- p. Thereafter, the CD requested for renewal of fund based working capital limits of Rs. 50,00,00,000/- at the existing level and forward contract limit of Rs. 25,00,00,000/- with credit exposure of Rs. 25,00,00,000/- and potential future exposure of Rs. 25,00,00,000/- on unsecured basis. The said request was accepted by the Financial Creditor vide its sanction letter dated 20.02.2014 sanctioned limits to Rs. 104,50,00,000/-.
- q. Next, renewal of working capital was sanctioned vide letter dated 23.12.2015 and has renewed the FBWC limits with reduction from Rs.50,00,00,000/- and credit exposure limit Rs. 50,00,00,000/- on notional amount of Rs. 25,00,00,000/- on unsecured basis.
- r. It is submitted that the corporate debtor approached the financial creditor for availing term loan of Rs. 38,00,00,000/- and the same was sanctioned vide sanction letter dated 19.12.2015 sanctioned term loan of Rs. 38,00,00,000/-.
- s. Further, working capital limits were renewed vide sanction letter dated 30.03.2017 and renewed the FBWC limits with reduction from Rs. 25,00,00,000/-.
- t. Thereafter, the financial creditor has sanction cash credit limits of Rs. 5,00,00,000/- and letter of credit and Bank Guarantee limits of Rs. 75,00,000/- to M/s KlarSehen Private Limited vide sanction letter dated 20.04.2017 and the terms and conditions thereof was accepted by M/s Klarsehen private limited and the corporate debtor. Moreover, M/s KlarSehen Private Limited was amalgamated into corporate debtor vide order dated 04.12.2015 and subsequent facilities were availed. Therefore, the liability in repaying the said loans have been transferred to Corporate Debtor.
- u. It is submitted that post-merger of this SBH and the financial creditor, the Corporate debtor approached the financial creditor for renewal and reduction of working capital limits. The said request was accepted, vide letter dated 04.01.2018 and renewed the working capital limits. It is

submitted that post-merger of the e-SBH and applicant Bank, the facilities provided by the e-SBH and the Applicant Bank have been merged and following are the facilities post-merger.

S. No.	Nature of Facilities	Amount in Crores
1	CC/EPC/PCFC/FBD/EBR	152.00
2	Term Loan	61.27
3	Total Fund Based Facilities	213.27
4	ILC/FLC/Buyers Credit	25.00
5	IBG/FBG	5.00
6	NFBWC	30.00
7	CEL	3.50
8	Total Non-Fund Based Facilities	33.50
9	Total Limits	246.77

- v. It is submitted that the Board of Directors of the corporate debtor in the meeting held on 14.11.2018 have confirmed that the corporate debtor availed loans both working capital and term loans from SBH and in the light of merger of SBH into Financial Creditor with effect from 01.04.2017 it was resolved to (1). Execute consolidated documents in favour of the Financial Creditor (2) Obtain renewal of working capital limits and such other facilities from the Financial Creditor (3) To execute personal guarantee and corporate guarantee by individual guarantors.
- w. It is submitted that the financial creditor at the request of the corporate debtor vide its sanction letter dated 26.07.2019 has allowed continuation of the working capital limits till 31.12.2019 and reduced the non-fund based limits to Rs. 26,50,00,000/- which will be further reduced to Rs. 15,00,00,000. Thereafter, the financial creditor vide its sanction letter dated 17.03.2020 has accepted the request of the corporate debtor extended the continuation of the working capital limits till 30.06.2020.
- x. Further, that due to the Covid-19 pandemic, the corporate debtor through its letter dated 05.06.2020 sought deferment of payment of

interest on the Term Loan as provided by the RBI guidelines. The said request of the corporate debtor was accepted and issued sanction letter dated 05.06.2020 wherein, the accumulated interest of Rs. 13,02,13,788/- for the period from 01.03.2020 to 31.08.2020 was converted in the fund interest term loan which was payable by the corporate debtor. The corporate debtor has accepted and signed the sanctioned letter duly accepting the terms and conditions.

- y. Moreover, the Financial Creditor vide its sanction letter dated 05.08.2020 has accepted the request of the corporate debtor and extended the continuation of the working capital limits till 31.01.2021 and the terms and conditions thereof was accepted by the Corporate Debtor.
- z. It is submitted that the corporate debtor vide letter dated 18.07.2020 approached financial creditor requesting common Covid emergency credit line for an amount of Rs. 15,00,00,000/-. The said request was accepted and accordingly the financial creditor vide sanction letter dated 29.06.2020 sanctioned Rs. 15,00,00,000/- subject to reduction of CC limits by Rs. 15,00,00,000/-. The existing limits as on the date of the sanction letter was Rs. 204,75,00,000/-.
- aa. It is submitted that facilities provided to the corporate debtor have been renewed from time to time and final limits as on 08.06.2021 are as follows:

Sl.No	Nature of Facilities	Amount in Crores
1	CC (including CCECL limit and other limits)	152.00
2	Term Loan	70.00
3	Non-Fund Based limits	10.00
	<b>Total</b>	<b>232.00</b>

- bb. The Corporate debtor in consideration of the facilities granted hypothecated its current assets as per various agreement. The corporate debtor has also hypothecated its fixed assets with Financial creditor. In addition, the corporate debtor has mortgaged its property by deposit of title deed in respect of its property.

- cc. The total amount of debt granted to the corporate debtor by the financial creditor is Rs. 232,00,00,000/-. The corporate debtor agreed to repay the credit facilities sanctioned by the financial creditor as per the terms and conditions contained in the sanction letters. The corporate debtor had also issued balance confirmation letters to the financial creditor acknowledging its liability to pay the loan outstanding.
  - dd. The corporate debtor was highly irregular in making repayment of the loan account and on 28.01.2021, the account of the corporate debtor was treated as NPA in accordance with law. The Demand Notice dated 04.03.2022 was issued under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest ACT, 2002 seeking payment of outstanding dues as on 28.02.2022. Despite demand notice issued under the SARFAESI Act, the corporate debtor failed to clear the outstanding dues.
  - ee. The financial creditor file original application before DRT-1, Hyderabad as OA 128/2022 and vide final order dated 22.04.2022 the same is pending for disposal.
  - ff. The claim of the financial creditor is within the period of limitation. The corporate debtor has always acknowledged its liability by way of balance confirmation letters vide letters dated 31.03.2016, 31.03.2017, 30.08.2019, 31.03.2020 and 31.12.2020 produced along with the application.
  - gg. The total amount in default and payable by the corporate debtor to the financial creditor as on 30.06.2022 is Rs. 241,40,62,023.40/- together with interest and other costs and expenses incurred and to be incurred. Though settlement offer was submitted by the corporate debtor, various queries raised by the financial creditor during consideration of the settlement offer was not answered by the corporate debtor and therefore no settlement could be arrived. The corporate debtor defaulted in payment of the admitted outstanding due of the financial creditor. Hence the financial creditor filed this petition under section 7 of the IBC.
3. Learned counsel for the Respondent filed its objection vide diary no: 3157 dated 15.06.2023 inter alia submitting that the Petition is barred



under section 10A of the Code. The date of default mentioned in the application is 28.01.2021 which falls under the 10A period. It was submitted that no petition under section 7, 9 or 10 can ever be filed for the initiation of the CIRP of a corporate debtor for default occurring during the period between 25<sup>th</sup> March 2020 till 25<sup>th</sup> March 2021. Further, the respondent have contended that the petition was filed without valid authorisation and the petition is filed for recovery of debt.

4. Rebutting the contention raised by the respondent it is stated by the petitioner in rejoinder vide diary no: 3402 dated 27.06.2023 that as per Annexure 18 of the petition the date of default is 03.05.2022; and Section 10A of the Code is applicable only when the date of default occurs during the period 25.03.2020 to 25.03.2021. It is further contended that as per the record of default issued by the NeSL the date of default is 03.05.2022. Moreover, the date mentioned in the application i.e, 28.01.2021 is NPA Date. Thereafter, demand notice was issued under section 13(2) of the SARFESI Act to the corporate debtor on 04.03.2022 calling upon the corporate debtor to make payment within 60 days from the date of notice. Therefore, the date of default for the purpose of the Code is 60 days from 04.03.2022 and is therefore 03.05.2022.
  
5. On 05.09.2023 the learned counsel for the petitioner submits that he has filed an Application, I.A No. 634 of 2023 on 17.07.2023 seeking permission to modify Form-1 in the main petition stating that the Applicant while filing Form No. 1 inadvertently mentioned the date of default as the date of NPA of the Corporate Debtor., i.e 28.01.2021 whereas the date of default had occurred on 03.05.2022. It is submitted that the Applicant issued a demand notice dated 04.03.2022 under Section 13 (2) of the SARFAESI Act) demanding payment of entire outstanding dues within 60 days from the date of the said notice after the account of the corporate debtor becoming NPA. However, the corporate debtor failed to make payment of the outstanding dues with the period of 60 days. Accordingly, it is clarified that the date of default

has occurred on 03.05.2022. The Learned Counsel for petitioner relied on the Order of Hon'ble NCLT, New Delhi in *"Kotak Mahindra Bank Private Limited vs. CMI Limited"* in CP (IB)- 481 (PB)/2021, wherein it is held that the issue of the correct date of default shall be adjudicated by this Adjudicating Authority after hearing the arguments of both the parties in the main Company Petition. Hence it is submitted that the Hon'ble Tribunal reinforces the principle that such amendments are procedural in nature.

6. However, the Learned Counsel for the respondent objected to the amendment of Form -1 citing the Order passed by the Hon'ble NCLT Mumbai dated 11.07.2023 in *"Comfort Fincap Ltd vs Seven Indian Heads Infrabuild Pvt.Ltd, I.A No. 2804/2022 in C.P (IB)-825(MB)/2022*, wherein it is held by the Tribunal that *"It is the cardinal principle of law that the amendment of pleadings shall be allowed by Courts and Tribunals liberally. At the same time, it is also a settled proposition of law that an amendment of pleadings cannot be allowed at a belated stage if the proposed amendment totally changes the cause of action and the whole case of the petitioner. It is also settled proposition of law that an amendment of pleading cannot be allowed which takes away the valuable defence and the plea of limitation available to the other side. It is very clear from the facts and circumstances that the Financial Creditor is making an attempt to shift the date of default by introducing new documents with new theories and stories that too after pointing out by the Corporate debtor that the date of default mentioned in the original petition is hit by Section 10A which is not legally permissible. Similarly, there is no express provision provided in the Code for amendment of pleadings. Rule 11 of NCLT is a mere enabling provision empowering the NCLT to pass any order to prevent the misuse and the abuse of the process of the Code and such an enabling provision cannot be used for filing application of this nature"*.
7. It is further submitted by the Corporate Debtor that the Applicant himself has pleaded that the date of NPA falls on 28.01.2021. The RBI

Circulars on classification of a Loan Account as NPA in all cases presupposes default first. It is submitted that a Loan Account is declared as NPA upon occurrence of default. As per the RBI Circular on Income Recognition, Asset Classification and Provisioning norms, it is submitted that a loan account is declared NPA only pursuant to the interest and or instalment of principal amount remaining overdue for a period of more than 90 days. It is submitted that the attempt of Applicant to shift the Default date which falls during the 10A period based on the NeSL certificate is impermissible resulting in change of cause of action of the petition and the same goes against the established banking practise, RBI Circulars and precedents.

8. On 10.01.2024, the Tribunal directed the petitioner counsel to furnish on the following explanation:

*“(a) The Petitioner is directed to clarify as to which and how many loans has become due from the Respondent which have been included in the amount of Rs.241,40,62,023/- mentioned in Part-IV of Form-1. Form-1 is not clear as to what loans have become due and no date of disbursements have been mentioned in Form-1; Para IV, Column I. Further, the amounts mentioned in Column I of Form-1 for the sanctioned credit facilities do not aggregate to this amount of Rs.241.40 Crores. In Column 2, the details have not been given in tabular Form.*

*(b) Cash Credit A/c 52096852129, it is seen that the date of disbursement is 06.05.1994. Further, Term Loan A/c No.62476948101 the date of disbursement is 06.08.2016. The Petitioner is directed to clarify as to how limitation is satisfied in these Loan Accounts.*

*(c) Further, Working Capital Loan – 1 and 2 and CCECL, the date of disbursement is 24.12.2020, 23.12.2020 and 30.07.2020. However, NPA is declared in these accounts on 28.01.2021 i.e., within months from the date of disbursement. This needs clarification.*

*(d) In NeSL ROD in Form-D attached with the Rejoinder, Unique Debt Identifier Number is 86382972801. It is not clear as to regarding which debt / loan account the NeSL has given its report.*

*(e) Further, the Petitioner is directed to clarify as on what date the default occurred on each Loan Accounts. No Ledger Account for the particular Loan Accounts have been submitted.*

*(f) Copy of NPA Order dated 28.01.2021.*

*3. Therefore, the Ld. Counsel for the Petitioner is directed to furnish the following data in a tabular form showing: (a) The loan accounts for which default has occurred; (b) The date(s) of disbursement for the aforesaid loan accounts; (c) The date as on when the default has occurred for each loan account; (d) In the event if any debt is barred by limitation, an explanation is to be given as to how the limitation issue is satisfied”.*

9. In compliance to the said order the petitioner counsel has filed a memo vide diary no: 1428 and 1994 dated 04.03.2024 and 28.03.2024 as under:

a) The details of the dues and the loan accounts have been given in a Tabular Form in Annexure No.16 (page -238 of Vol. No. 1):

**Loan Accounts dues as on 30.06.2022 (Amount in Rs.)**

<b>Sl. No</b>	<b>Nature of Facility</b>	<b>Principal</b>	<b>Interest + penal interest</b>	<b>Total (Rs.)</b>
1	C C -52096852129	46,58,94,827.73	14,58,78,317.23	61,17,73,144.96
2	T L- 62476948101	28,08,30,909.00	9,69,94,193.85	37,78,25,102.85
3	WCDL-39892469284	33,00,00,000.00	11,53,22,058.62	44,53,22,058.62
4	WCDL-39889954468	60,00,00,000.00	21,00,19,140.48	81,00,19,140.48
5	CCECL-39537533076	15,00,00,000.00	1,87,51,724.49	16,87,51,724.49
	<b>Total:</b>	<b>1,82,67,25,736.73</b>	<b>58,69,65,434.67</b>	<b>2,41,40,62,023.40</b>

- b) The cash credit facility in CC A/c. No. 52096852129 was disbursed on 06.05.1994 (Sl.No.1) to the Corporate Debtor by the State Bank of Hyderabad (SBH) and thereafter the Corporate Debtor has been paying the loan dues. The Acknowledgement of debt and Balance confirmation letters, were also executed periodically. The debtor was paying the loan dues since the disbursement till it was classified as NPA. Thereafter the Term Loan A/c. No. 62476948101 was disbursed on 06-08-2016 (Sl.No.2) to the Corporate Debtor by the State Bank of Hyderabad (SBH) and thereafter the loan was repaid in instalments continuously. The Loan revival letters /Letter of confirmations are produced as Annexure 90 to 95 (Annexure 90- Revival Letter dated 20.06.2015 Annexure 91- Letter of confirmation dated 31.03.2016 and Annexure 92- Letter of confirmation dated 31.03.2017. Further, the State Bank of Hyderabad (SBH) merged with the State Bank of India as on 01-07-2017 as per Gazette Notification G.S.R 156(E) dated 22-02-2017 (Annexure- 4). The State Bank of India issued fresh Sanction letter on 04-01-2018 (Annexure-5) with

respect to the various credit facilities to an extent of 246.77 Crores. The Corporate Debtor has issued Annexure -93 being the Balance confirmation letter as on 30.08.2019, Annexure 94, Balance confirmation letter as on 31.03.2020 and Annexure 95- Balance Confirmation Letter as on 31.12.2020.

- c) That as per the RBI IRAC norms and regulations, the NPA guidelines are applicable in a manner such that if any one account of the Borrower is classified as NPA, the same results in determining the other accounts existing with the bank as NPA, irrespective of whether there is occurrence of default with respect to such other accounts or not. It is submitted that the primary default occurred in respect of the Term Loan account bearing No. 62476948101 when the Corporate Debtor failed to make the payments against the instalment due dated 31.10.2020. Due to the non-repayment of the afore-mentioned instalment even after 90 days of the due date, the said account was classified as NPA as on 28.01.2021. Apart from this the Corporate Debtor failed to make the payments against subsequent instalments in respect of the said Term Loan, due on 31.01.2021 and on 30.04.2021. The CC Account bearing No. 52096852129, CCECL Account bearing No.39537533076, WCDL Account 39892469284, WCDL Account 39889954468 and Funded Interest Term Loan (FITL) Accounts, were classified as NPA due to Non-Servicing of Interest. This resulted in determining, the other loan accounts of the Corporate Debtor were automatically classified as NPA as per the RBI IRAC norms and regulations.
- d) The Insolvency and Bankruptcy Board of India vide Notification No. IBBI/2022-23/GN/REG085, dated 14.06.2022 inserted sub-regulation (1A) of the Regulation 20 in Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 to mandate the Information Utility to process the financial information and issue the record of default to the creditor(s) so as to facilitate the creditors to attach the same with their insolvency applications under Section 7 or 9 of the IB Code. Accordingly all the loans of

the Corporate Debtor are mentioned under **Unique Debt Identifier Number is 86382972801**. Copy of the afore-mentioned Circular of Insolvency and Bankruptcy Board of India along with Gazette Notification is attached as **Annexure –B and C**. Unique Debt Identifier Number is 86382972801 is given to the Corporate Debtor and total dues as on 30.07.2022 in all facilities are summed in NeSL Report and overdue amount of Rs.2,39,80,92,570.00 is mentioned.

- e) The date of default for each loans is 03.05.2022 i.e. 60 days from notice dated 04.03.2022 issued under Section 13 (2) of the SARFESI Act. As per the Record of Default dated 30.07.2022 issued by the Information Utility, National E-Governance Service Limited (NeSL), the date of default is determined as 03.05.2022. Copy of the said Record of Default issued by NeSL is attached with the Main Application as Annexure 18 at page No. 285 and Annexure 99 produced with re-joinder dated 27-06-2023. The Record of Default issued by the Information Utility, National E-Governance Service Limited (NeSL), the dates of default in respect of each loan Accounts are 03.05.2022. Copy of the **ledger Accounts** of the loans from Jan 2022 to 30-07-2022 of all the facilities is produced as Annexure 101 with rejoinder dated 27-06-2023. Once again the same is produced herewith as **Annexure –D**.
- f) That as on 28.01.2021 the Term Loan Account of the Corporate Debtor was classified as NPA, the same resulted in determining the other loan accounts of the Corporate Debtor as NPA and automatically all the loan accounts of the Account of the Corporate Debtor was treated as NPA. As the loan accounts were classified as NPA during Covid restriction period, the demand notice Sec 13(2) of the SARFAESI Act, 2002 was not issued. Subsequently the Demand Notice under Sec 13(2) of the SARFAESI Act, 2002 was issued to the Corporate Debtor dated 04.03.2022, calling in to make the payment of the dues as on 28.02.2022 in full. The applicant had inadvertently mentioned the date of Default in the Form No.1 as 28.01.2021 instead of date of default 03.05.2022 as

recorded by Information Utility. Application for amendment I.A. No. 634/2023 is filed to correct the same. The copy of notice dated 04.03.2022 issued under Section 13 (2) of the SARFESI Act with details of the loan Accounts is produced as **Annexure-E**.

**At para 3 of the order the Petitioner was directed to furnish the following data in a tabular form showing:**

(a)

Sl. No.	Account No.	Account Type	Amount Disbursed (Rs.)
1.	52096852129	CC	44,00,00,000
2.	62476948101	TL	70,00,00,000
3.	39892469284	WCL – 1	33,00,00,000
4.	39889954468	WCL – 2	60,00,00,000
5.	39537533076	CCECL	15,00,00,000

(b)

Sl No.	Account No.	Account	Amount disbursed	Date of Disbursal
1.	52096852129	CC	44,00,00,000	06.05.1994
2.	62476948101	TL	70,00,00,000	06.08.2016
3.	39892469284	WCL - 1	33,00,00,000	24.12.2020
4.	39889954468	WCL - 2	60,00,00,000	23.12.2020
5.	39537533076	CCECL	15,00,00,000	30.07.2020

(c) The date of default for each loans is occurred on 03.05.2022 i.e. 60 days from notice dated 04.03.2022 issued under Section 13(2) of the SARFESI Act. (Annexure 15-page 222 Vol. No.2) As per the Record of Default dated 30.07.2022 issued by the Information Utility, National E-Governance Service Limited (NeSL), the date of default is determined as 03.05.2022. NeSL Report dated 30.07.2022 is attached as **Annexure –F**.

Account No.	Type of Account	Amount Disbursed	Date of Disbursal	Date of Default
52096852129	CC	44,00,00,000	06.05.1994	03.05.2022
62476948101	TL	70,00,00,000	06.08.2016	03.05.2022
39892469284	WCL – 1	33,00,00,000	24.12.2020	03.05.2022
39889954468	WCL – 2	60,00,00,000	23.12.2020	03.05.2022
39537533076	CCECL	15,00,00,000	30.07.2020	03.05.2022

(d) The claim of the Financial Creditor for all the debts is within the limitation period. The Corporate Debtor has always acknowledged it's

liability by way of balance confirmation letters vide letters dated 31.03.2016, 31.03.2017, 30.08.2019, 31.03.2020 and 31.12.2020 produced along with the main application as Annexure 91, 92, 93, 94 and 95 the Corporate Debtor acknowledged its liability. The Annexure 96 to the main petition is the revival letter dated 04-03-2021.

3. The Corporate Debtor has made part payment in CC Loan A/c No. 52096852129 on 13.04.2022 and TL A/c. No. 62476948101 on 27.01.2022. This is clear as per the Ledger Account produced in as Annexure D.

### **ANALYSIS AND CONCLUSION:**

10. Heard both the counsels in the company petition and I.A and perused the records.
11. The main issue in respect of this petition is regarding the occurrence of default during the period specified under Section 10A of the I & B Code, 2016. It is noticed from the C.P filed on 16.08.2022 that in Part-IV of Form-1, at Para-2 against the 'Date of Default', it is stated that '*28.01.2021, the account of the Corporate Debtor was treated as NPA*'.
12. Section 10A of the I & B Code, 2016 was introduced on 23.09.2020, w.e.f 05.06.2020; in which it has been provided as under:

#### **Section 10A:**

#### ***Suspension of initiation of corporate insolvency resolution process:***

*Notwithstanding anything contained in Sections 7,9 and 10, no application for incitation of corporate insolvency resolution process of a corporate debtor shall be fixed, for any default arising on or after 25<sup>th</sup> March, 2020 for a period of six months or such further period, not exceeding on every 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 25<sup>th</sup> March 2020."*



13. The period specified in Section 10A of the Code was subsequently extended by the Government upto 24.03.2021 vide Notification number S.O 4638 (E) dated 22<sup>nd</sup> 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.
  
14. Since in the Form-1 filed with the petition, the NPA date of 28.01.2021 was mentioned as ‘date of default’, the Petitioner sought liberty to file amended Form-1. Accordingly, the I.A. No. 634 of 2023 was filed for amending Form-1 filed on 17.07.2023, in which the Petitioner sought to change the ‘date of default’ stating that notice u/s.13(2) of SARFAESI Act was issued on 04.03.2022, demanding the payment of entire outstanding dues within sixty days from the date of the said notice. However, the CD failed to make payment of the outstanding dues within the period of sixty days. Accordingly it is stated that the default occurred on 03.05.2022 i.e., after the completion of the sixty days granted vide notice dated 04.03.2022. Therefore, 03.05.2022 is now claimed to the ‘date of default’
  
15. Therefore, the ‘date of default’ has been changed from the earlier declared date of **28.01.2021** to **03.05.2022**. Along with the amended application one Record of Default (ROD) authenticated by NeSL on 12.07.2022 has been filed with Unique Debt Identifier (‘UDI’) No. AAACS8577K\_86382972801. On 10.01.2024, the Tribunal directed the petitioner counsel to furnish on the following explanation:

(d) In the NeSL ROD in Form-D attached with the Rejoinder, Unique Debt Identifier Number is 86382972801. It is not clear as to regarding which debt / loan account the NeSL has given its report.

In response, the following explanation was furnished:

*“The Insolvency and Bankruptcy Board of India vide Notification No. IBBI/2022-23/GN/REG085, dated 14.06.2022 inserted sub-regulation (1A) of the Regulation 20 in Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 to mandate the Information Utility to process the financial information and issue the record of default to the creditor(s) so as to facilitate the creditors to attach the same with their insolvency applications under Section 7 or 9 of the IB Code. Accordingly all the loans of the Corporate Debtor are mentioned under **Unique Debt Identifier Number 86382972801**. Copy of the afore-mentioned Circular of Insolvency and Bankruptcy Board of India along with Gazette Notification is attached **as Annexure –B and C**. Unique Debt Identifier Number is 86382972801 is given to the Corporate Debtor and total dues as on 30.07.2022 in all facilities are summed in NeSL Report and overdue amount of Rs.2,39,80,92,570.00 is mentioned.”*

In this connection, it is observed that the petitioner in its rejoinder filed vide diary no: 3402 dated 27.06.2023 has produced the Record of Default issued by the NeSL. The Form – D authentication was completed on 30.07.2022 for the Loan Account AAACS8577K\_86382972801 which shows the default amount as Rs. 2398092570/- and date of default as 03.05.2022. Further, it is observed that from the Part A of the NeSL Report enclosed with the ROD in Form ‘D’ under the heading of Debt Information, the Debt Reference No. **86382972801** and the sanctioned Debt Amount is Rs. 2,32,00,00,000/-, the total outstanding amount is 2,39,80,92,570/- and the Debt Contract Date is 11.03.1993. The same is reproduced below:

Debt Information	
Type of Debt	Financial
Debt Reference No.	86382972801
Debt Contract Date	11-03-1993
Debt Start Date	11-03-1993
Debt Currency	INR
Sanctioned Debt Amount	2,32,00,00,000.00
Facility Name	CC & TERM LOANS
Total Outstanding Amount	2,39,80,92,570.00
Amount Overdue	2,39,80,92,570.00
Days past due (DPD)	518
Account Closed Flag	NO

16. It is noticed that from the Form 1 in part IV of the application, that from the working computation for all the loan accounts in default given in Annexure – 16 on page 238 of the C.P, the Principal amount was totalling to Rs. 1,82,67,25,736.73, and the interest was Rs. 58,69,65,434.67/-. Hence, the total outstanding dues in default was Rs. 241,40,62,023.40/-. This working computation is in fact mentioned in Item 2 of Part IV of Form No.1. The same is reproduced below (from Annexure 16):

Sl. No	Nature of Facility	Principal	Interest + penal interest	Total (Rs.)
1	C C -52096852129	46,58,94,827.73	14,58,78,317.23	61,17,73,144.96
2	T L- 62476948101	28,08,30,909.00	9,69,94,193.85	37,78,25,102.85
3	WCDL-39892469284	33,00,00,000.00	11,53,22,058.62	44,53,22,058.62
4	WCDL-39889954468	60,00,00,000.00	21,00,19,140.48	81,00,19,140.48
5	CCECL-39537533076	15,00,00,000.00	1,87,51,724.49	16,87,51,724.49
	<b>Total:</b>	<b>1,82,67,25,736.73</b>	<b>58,69,65,434.67</b>	<b>2,41,40,62,023.40</b>

Sl No.	Account No.	Account	Amount disbursed	Date of Disbursal
1.	52096852129	CC	44,00,00,000	06.05.1994
2.	62476948101	TL	70,00,00,000	06.08.2016
3.	39892469284	WCL - 1	33,00,00,000	24.12.2020
4.	39889954468	WCL - 2	60,00,00,000	23.12.2020
5.	39537533076	CCECL	15,00,00,000	30.07.2020

Therefore, it is observed that the Sanctioned debt amount in the NeSL report which is mentioned Part A of the attachment to the ROD in Form 'D' issued by NeSL, and the Principal amount which is stated to be in default in the application (Annexure 16 to C.P) as well as in the written submissions was different. The Part A attached to Form 'D' issued by NeSL shows that the Debt Ref. No. 86382972801 in fact related to an amount of Rs. 2,32,00,00,000/- which was lent on 11.03.1993; which is an entirely different loan account and is not at all included in the principal amount of Rs. 1,82,67,25,736.40/-. The total outstanding amount of Rs. 2,41,40,62,023/- (inclusive of interest) which was shown in column 2 of Part IV of Form No.1; in fact related to Loans given on 06.05.1994 and afterwards. Even the description of Loans Sanctions mentioned in column 1 of Part IV, refer to entirely different amounts and dates. Moreover, Out of loan accounts in default shown in Part IV of Form No.1, the Account No. 52096852129 and 62476948101 for the amount of 44,00,00,000 and 70,00,00,000 was disbursed on 06.05.1994 and 06.08.2016 respectively. Also, the account numbers mentioned in the Part IV of the Petition which is in default is not matching with the NeSL Report. Therefore, there is a mis-match not only in the Loan account numbers but also in the sanctioned amount as well.

17. The other explanation given by the petitioner for producing one loan account number for the default loan accounts is untenable. The clubbing of different loan accounts for different loan is not contemplated in the *Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017*. Further, it is observed that in the Bye Laws of the NeSL, Chapter V (f), it is stated as under:

*“f) Unique Debt Identifier (UDI) - UDI is planned as a combination of the creditor's identity (UIN) combined with the loan account number allotted by the creditor. Prefixing of creditor identification (PAN) is necessary for uniqueness of UDI since it is possible that two creditors may have issued the same loan number.”*

It clearly mentions that the UDI is a combination of Creditor PAN Number and the loan account number allotted by the Creditor. Hence, the clubbing of different loans in the same loan account number for the

issuance of NeSL report is not envisaged in these guidelines for NeSL. Therefore, the NeSL record of default referred to above is for a different loan account number, which is not for the loan accounts mentioned in Form No.1 filed with the application.

18. The Petitioner has submitted its response regarding the queries vide its written submissions filed on 28.03.2024 which has been discussed in the pleadings. It is seen that the Petitioner had tried to shift the 'date of default' on being confronted with the situation that the 'date of default' declared in the C.P filed on 16.08.2022 being 28.01.2021 was hit by the provisions of Section 10A of the IBC Code. **However, one essential element of Section 10A of the Code is the proviso, according to which no application shall ever been filed for initiation of CIRP of the Corporate Debtor for the default occurring during the said period i.e. 25.03.2020 to 24.03.2021.** Therefore the intention of the Legislature is to completely bar the initiation of CIRP u/s.7, 9 and 10 if a default has already occurred in the specified period; and there is no scope of revival of the right for such initiation of CIRP. By making an alternative claim, the Petitioner has just tried to wriggle out of the restriction imposed under Section 10A of the Code and to overcome this statutory requirement which cannot be permitted in view of the proviso to Section 10A of the Code. However, the date of 03.05.2022 is now claimed as 'date of default' in the submissions; on the basis of alleged default in payment the outstanding amount within the sixty granted in the notice u/s.13(2) of SARFAESI Act issued on 04.03.2022. On the other hand, it has not been the case of the petitioner that the default had not occurred leading to the declaration of the a/c as NPA on 28.01.2021.
19. In fact, the petitioner in the written submissions filed on 04.03.2024 and 28.03.2024; has admitted as under:

**"It is submitted that the primary default occurred in respect of the Term Loan account bearing No. 62476948101 when the Corporate Debtor failed to make the payments against the instalment due dated 31.10.2020. The non-repayment of the afore-mentioned**

***instalment even after 90 days of the due date, the said account was classified as NPA as on 28.01.2021. Apart from this the Corporate Debtor failed to make the payments against subsequent instalments in respect of the said Term Loan, due on 31.01.2021 and on 30.04.2021. The CC Account bearing No. 52096852129, CCECL Account bearing No.39537533076, WCDL Account 39892469284, WCDL Account 39889954468 and Funded Interest Term Loan (FITL) Accounts, were classified as NPA due to Non-Servicing of Interest. This resulted in determining the other loan accounts of the Corporate Debtor automatically classified as NPA as per the RBI IRAC norms and regulations.”***

20. Thus, there is a clear-cut admission by the petitioner that primary default had already occurred on 31.10.2020 by non-payment of the instalment due on that date and the subsequent instalment due on 31.01.2021 was also defaulted. In this connection it is relevant to cite the judgment of **the Hon’ble Apex Court** in the matter of ***Innoventive Industries Ltd. v. ICICI Bank and Anr., in Civil Appeal Nos. 8337-8338 of 2017, (2017) ibclaw.in 02 SC dated 31 Aug 2017***, in which it was observed that,

*“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed.”* Thus, this Judgment of the Hon’ble Apex Court has clearly laid down that the default u/s. 3(12) occurs on the non-payment of the due instalment or part of a debt, which has occurred on 31.10.2020 in this case.

21. 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*’ have to 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.

22. Therefore, considering that in Part-IV of the Form-1 there is a specific mention of the date of default as 28.01.2021, 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. 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.
23. Moreover, the claim made the written submissions dated 28.03.2024 regarding the ‘date of default’ as 03.05.2022 is not tenable in law. In the

Form-1 filed with the C.P, ‘the ‘date of default’ was mentioned as 28.01.2021 on the basis of the declaration of the Corporate Debtor’s account as NPA. Accordingly, it is relevant to examine the significance of NPA which is taken as the ‘date of default’ originally. 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.

24. We further proceed to refer to 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 90<sup>th</sup> 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)*

Thus, the Hon’ble NCLAT has concurred with the argument of the **Financial Creditor, being State Bank of India**, in this regard.

25. 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. **It is pertinent to mention here that in the above mentioned judgment of the Hon’ble NCLAT it was the State Bank of India itself which had argued this issue of the date of classification of NPA being the ‘Date of Default’ for the purpose of section 7 of the IBC, 2016. Therefore, in this case also the ‘date of default’ being the date of declaration as NPA i.e., 28.01.2021, was correctly mentioned in the Form-1 filed with the C.P.** As an alternative, in accordance with the RBI prudential 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 of NPA, which become 31.10.2020 in this case, which also falls within the suspension period prescribed under Section 10A of the Code. Incidentally, the date of 31.10.2020 has also been admitted by the petitioner to be the date when the instalment due in respect of the Term Loan was not paid by the C.D., as discussed above in para 16.

26. In the Written submissions vide Dy.No.1994 dated 28.03.2024, the Petitioner has explained the basis of the claim that the 'date of default' **was 03.05.2022**, as against 28.01.2021 mentioned in the Form-1 filed with the C.P on 16.08.2022. The entire basis of these claims is that the SARFAESI Notice dated 04.03.2022 was issued asking the CD to make the payment within 60 days. Accordingly, on failure of making this payment by the due date, this due date of 03.05.2022 becomes the **new 'date of default'**. This claim is legally invalid and untenable in law. The default has already occurred in this case on 28.01.2021, in accordance with the declaration made in Form-1 filed with the petition. In this connection, it would be relevant to consider the provisions of Section 13(2) of the SARFAESI ACT, 2002 which is reproduced below:

*"Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4)."*

Thus, the provisions are clearly based on a default in payment of a debt and instalment thereof having already taken place, and a notice under Section 13(2) SARFAESI ACT, 2002 is just a subsequent provision before carrying out the prescribed procedure of the recovery of the debt in default. Even in the notice dated 04.03.2022 issued by the Financial Creditor, it is stated that the same has been issued 'consequent to the default committed' by the Corporate Debtor. Therefore, it cannot be argued that when the default was already committed in this case by non-payment of the instalment by the Corporate Debtor on 31.10.2020, the

same can be shifted merely because the notice under Section 13(2) of the SARFAESI ACT, 2002 has been issued on 04.03.2022. Accordingly, the argument of the Petitioner that due to the period having been granted to the Corporate Debtor for discharging of the liabilities within 60 days from the date of this notice, a new date of default has arisen on the expiry of this 60 days' period, since the debt was still not paid i.e., on 03.05.2022; is not legally tenable.

27. 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, being the *State Bank of India* that the date of declaration of NPA could be validly considered as the 'Date of Default' for the purposes of the Code; and State Bank of India is the Financial Creditor in the case also.** Therefore, the same Financial Creditor cannot take an altogether different stand in this case; as against the argument made by them before NCLAT in the above referred matter.

28. At the cost of repetition, **it is reiterated that if such an interpretation as claimed by the petitioner is made, the provisions of Section 10A of the Code would become meaningless and redundant. If such an argument is allowed to be accepted, in every such case where the default has occurred during the period specified under Section 10A, the Financial/Operational Creditor would issue a recall notice or a /**

**legal notice, like under section 13(2) of SARFEASI Act as per their will and convenience, and attempt to shift the ‘date of default’, which would enable them to defeat the provisions of Section 10A of the Code read with its proviso.** In view of this Proviso, once a default has already occurred during the said period, there is no way that later any notice under any legal provisions can be issued to restore the right of the Petitioners to file an application for initiation of CIRP; and give rise to a fresh default or a new ‘date of default’ due to the default in responding to this notice. Since the Corporate Debtor has not yet repaid the loan amount, the financial creditor is bound to give such legal notice for recovery of the same, but the consideration of the same cannot revive this right due to a complete bar imposed by the Proviso. **The interpretation of a statutory enactment cannot be allowed to be made in such a manner which acts towards making it meaningless and redundant. Therefore, the contention of the Petitioner, which would have the effect of negating the legislative bar under Section 10A of the Code against the filing of an application for initiation of CIRP cannot be treated to be legally tenable, and accordingly is liable to be rejected.**

29. The basic thrust of the argument of the Petitioner is on the basis that since the default which has occurred during the period specified under Section 10A leading to the declaration of the Corporate Debtor’s account as NPA as 28.01.2021 is still continuing, the Petitioner can shift the ‘date of default’ by issuing a legal notice under SARFEASI. The date of 03.05.2022, when the period of sixty days which was granted by the notice under SARFAESI Act lapsed and the outstanding amount remained unpaid, was now selected as new ‘date of default’. If such a claim is allowed, it would lead to a direct infringement of the Proviso to Section 10A of the IBC, which is reproduced below again for the sake of convenience:

*“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.”*

If the argument made by the Petitioner is allowed to be accepted, the phrase or the words, **“No application can ever be filed”** in the proviso to Section 10A will be rendered meaningless. Therefore, such an interpretation cannot be made legally; which causes this proviso and therefore Section 10A to become totally redundant. The facts of this case clearly establish that the default had already occurred in the period specified under Section 10A, and therefore no application for initiation of CIRP can **ever** be filed in respect of this default. The petitioner has also not denied that the default had already occurred in the exclusion period under section 10A of the code. In fact, in the written submission filed on 04.03.2024, (supra), the financial creditor has admitted that the primary default had occurred on non-payment of the instalment dated 31.10.2020. The Petitioner also went ahead and obtained a NeSL report in Form-D with a different loan account no. (UDI No.), regarding which it has been observed above in para 15 to 17 that it related to an altogether different loan account which was sanctioned/distributed on a different date.

30. 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 v 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.**”

31. In the recent order of the Hon’ble NCLAT in the case *Milind Kashiram Jadhav versus State Bank of India and another* (supra) it is held that the date of declaration as NPA was a valid ‘date of default’; and **any subsequent part payment or recall notice or OTS proposal from the Corporate Debtor would not go towards altering this date, when the default has already occurred during the period specified under Section 10A of the Code.** Similarly; and on the same basis; any legal notice like notice under SARFAESI Act issued subsequently would not alter the date of default, and would not revive the right to file the application u/s.7 in view of the proviso to Section 10A of the IBC.

32. Accordingly, 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 (IB)**



**No.167/BB/2022 is dismissed as not maintainable. As a consequent, I.A. No.634 of 2023 is dismissed in terms of the above.**

However, it is made amply clear that this will not come in the way of any other legal remedies under any other provisions of Law for the recovery of the debt if so advised, and the Petitioner is free to pursue all modes of recovery permissible under the Law.

**-Sd/-**

**MANOJ KUMAR DUBEY  
MEMBER (TECHNICAL)**

**-Sd/-**

**K. BISWAL  
MEMBER (JUDICIAL)**