

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.386 of 2024**

(Arising out of Order dated 02.02.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Division (Special) Bench, Court No.II, Kolkata in Company Petition (IB) No.284/KB/2022)

**IN THE MATTER OF:**

Pawan Rajgaria  
Suspended Director of Ananya Wood Private Limited,  
R/o Flat No. 13B, 13th Floor,  
Tower-1,  
16A, Gurusaday Road, Kolkata 700019 ... Appellant

Versus

1. Canara Bank,  
having its Head Office at Bangalore in the  
State of Karnataka and  
carrying on business through its  
different branches including one named  
Asset Recovery Management Branch  
at 21, Camac Street,  
P.S.- Shakespeare Sarani,  
Kolkata- 700 016.
2. Ananya Wood Private Limited  
Through its Interim Resolution Professional  
Mr. Anil Agarwal,  
AAA Insolvency Professionals LLP,  
Address: Mousami Apartment, 158,  
Ballygunge Circular Road, Gr. Floor,  
Kolkata 700027. ... Respondents

**Present:**

**For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Ms. Pallavi Pratap, Mr. Arik Banerjee, Ms. Muskan Jain, Mr. Shaunak Ghosh, Saheli Sen and Mr. Rajib Mullick, Advocates.**

**For Respondents: Mr. Dipankar Das and Ms. Sanjana Nandi, Advocates for R-1.**  
**Mr. Aditya Gauri and Mr. Amar Vivek, Advocates for RP.**

## J U D G M E N T

### ASHOK BHUSHAN, J.

This Appeal by Suspended Director of the Corporate Debtor has been filed challenging order dated 02.02.2024 passed by National Company Law Tribunal, Division (Special) Bench, Court No.II, Kolkata, admitting Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) filed by the Canara Bank, the Financial Creditor.

2. Brief facts necessary to be noticed for deciding the Appeal are:

- (i) The Canara Bank sanctioned Cash Credit Limit of Rs.6 crores and FLC of Rs.4 crores, totaling Rs.10 crores to the Corporate Debtor on 28.08.2016. Working Capital Consortium was also executed on 23.12.2016 for Rs.42.30 crores, in which Financial Creditor had sanctioned Rs.7 crores and State Bank of India Rs.35.30 crores. Supplemental Working Capital Consortium Agreement was also executed from time to time. The Financial Creditor last renewed the Sanctioned Facilities for one year vide its letter dated 26.07.2019.
- (ii) The account of Corporate Debtor was declared as Non-Performing Asset (“**NPA**”) by the Financial Creditor on 14.02.2020.
- (iii) Notice under Section 13, sub-section (2) of the SARFAESI Act, 2002 was issued by the Financial Creditor on 18.02.2020.

Thereafter, Original Application was filed before the Debts Recovery Tribunal by the Financial Creditor.

- (iv) M/s Rajgaria Timber Private Limited & Anr. filed a Writ Petition Appeal, being APO No.111 of 2020. M/s Rajgaria Timber Private Limited questioned the steps taken by the Financial Creditor under the SARFAESI Act and an issue was raised in the Appeal that Appellant - M/s Rajgaria Timber Private Limited was entitled for 270 days credit. The Appeal was disposed of, directing the State Bank of India (“**SBI**”) to decide the issue raised in the Writ Petition, which is still pending before the SBI.
- (v) On 15.02.2022, a letter was issued by Financial Creditor to the Corporate Debtor as well as Corporate Guarantors, informing the dues as on 14.03.2022 of Rs.12,86,89,020.28/-, which was requested to be paid within 10 days. Notice was given that failing the payment, the Bank shall take steps under the IBC.
- (vi) No payments having been made, Section 7 Application was filed by the Financial Creditor, claiming a debt of Rs.13,78,35,737.34/- as on 31.08.2022, mentioning the date of default as 14.02.2020. Notice was issued in Section 7 Application, to which reply was filed by the Corporate Debtor. Rejoinder affidavit was also filed by the Canara Bank.
- (vii) The Adjudicating Authority vide order dated 02.02.2024 admitted Section 7 Application holding that debt and default

has been proved by the Financial Creditor. The Suspended Director of the Corporate Debtor aggrieved by the admission of Section 7 Application has come up in this Appeal.

3. We have heard Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant; Shri Dipankar Das and Ms. Sanjana Nandi, learned Counsel appearing for Financial Creditor and Shri Aditya Gauri, learned Counsel for RP.

4. Shri Abhijeet Sinha, learned Senior Counsel challenging the impugned order, submits that Section 7 Application filed by Canara Bank was barred by Section 10A. It is submitted that the Financial Facilities granted to the Corporate Debtor was renewed by letter dated 26.07.2019 for one year i.e. upto 25.07.2020. Hence, the default, if any, would have been only on 25.07.2020, which date was during 10A period, the Application was liable to be rejected as barred by Section 10A. Date of NPA declared by the Canara Bank as 14.02.2020 was also not in accordance with law. It is submitted that Corporate Debtor was allowed only 180 days usance period for Letter of Credit, whereas the Appellant was entitled for 270 days usance period. Reference has been made to the Writ Petition of the Appellant filed in the Calcutta High Court as well as Writ Petition filed by the Corporate Debtor before the Hon'ble Supreme Court where various issues including the declaration of NPA have been questioned. It is submitted that Adjudicating Authority committed error in only referring to APO No.111 of 2020 filed by M/s Rajgaria Timber Private Limited, whereas the Corporate Debtor has also filed Writ Petitions raising various issues.

5. The learned Counsel appearing for the Financial Creditor, refuting the submissions of learned Counsel for the Appellant, submits that date of NPA being 14.02.2020, there is no question of Application being barred by Section 10A. The fact that renewal of Sanction was granted for one year on 26.07.2019, in no manner shall make the date of default as 25.07.2020, as contended by the Appellant. The Corporate Debtor was sanctioned usance period of 180 days since inception. The Corporate Debtor's account was declared NPA due to default committed by the Corporate Debtor. The Financial Creditor served upon the Corporate Debtor several notices including the notice under Section 13, sub-section (2) of the SARFAESI Act. The Appeal, which was filed in the Calcutta High Court by M/s Rajgaria Timber Private Limited has nothing to do with the Financial Creditor as the said proceedings were against the SBI and not between the Corporate Debtor and the Canara Bank. It is submitted that according to own showing of Appellant, Writ Petition filed by the Corporate Debtor before the Hon'ble Supreme Court was dismissed as withdrawn, which order has been brought on record by the Appellant itself in the additional affidavit. It is further submitted that in Part-IV of Section 7 Application, 14.02.2020 was mentioned as date of default, hence, there is no occasion to hold Application being barred by Section 10A.

6. We have considered the submissions of learned Counsel for the parties and have perused the records.

7. We may first notice the Part-IV of the Application under Section 7 filed by Financial Creditor, where particulars of financial debt and date of

default have been mentioned. Part-IV, Item-2, mentioning about the amount of claim and date of default is as follows:

“2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED  (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT ANP DAYS OF DEFAULT IN TABULAR FORM)	Rs,13,78,35,737.34 as on 31.08.2022 and the default occurred on 14.02.2020 when the account was declared NPA.  Copies of the calculation sheets showing workings for computation of amount and days of default have been annexed hereto and marked as annexure – I.”
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8. The Application under Section 7, thus, clearly mentions that date of default was 14.02.2020, when the account was declared NPA. The Financial Creditor was fully entitled to file Section 7 Application, treating the date of default as 14.02.2020. The Hon’ble Supreme Court in ***Laxmi Pat Surana vs. Union Bank of India and Anr. – (2021) 8 SCC 481*** in paragraph 43 has held following:

“**43.** Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 IBC. However, Section 7 comes into play when the corporate debtor commits “default”. Section 7, consciously uses the expression “default” — not the date of notifying the loan account of the corporate person as NPA. Further, the expression “default” has been defined in Section 3(12) to mean non-payment of “debt” when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. In cases where the corporate person had offered guarantee in respect of loan

transaction, the right of the financial creditor to initiate action against such entity being a corporate debtor (corporate guarantor), would get triggered the moment the principal borrower commits default due to non-payment of debt....”

9. It is further relevant to notice that date of NPA mentioned was not for the first time mentioned in Section 7 Application. The Financial Creditor has initiated proceedings under the SARFAESI Act against the Corporate Debtor before the Debts Recovery Tribunal, referring to Notice under Section 13, sub-section (2) of SARFAESI Act and the date of NPA was mentioned as 14.02.2020. The sheet-anchor submission of learned Counsel for the Appellant is on renewal letter dated 26.07.2019 issued by the Syndicate Bank (now Canara Bank). It is useful to notice the letter dated 26.07.2019, relevant extracts of which are as follows:

“MID CORPORATE SHAKESPEARE SARANI BRANCH  
26 Sahkespeare Sarani, Dimple Court 1<sup>st</sup> Floor Kolkata ZOOOI7  
Ph No: 033.22903852, Mob: 0943305841  
Email: [br.9768@syndicatebank.co.in](mailto:br.9768@syndicatebank.co.in)  
Ref No.: SL 008/9768/MCB/AWPL/2019      26.07.2019

To  
M/s Ananya Wood Private Limited  
Regd. Office Situated at,  
RAIKVA 3A Ram Mohan Mullick Garden Lane,  
4th Floor Room No 10  
Kolkata 700010

**Subject: - Renewal df Your working capital limit under consortium banking arrangement**

With reference to the above, the competent authority has sanctioned the renewal of working capital Limits to be **valid for one year from oi date of sanction i.e., upto 25.07.2020 to M/s Ananya Wood Private Limited** under consortium banking arrangement lead by State Bank of India on the terms and conditions mentioned below. A fresh and complete set of credit proposal shall be sent to us at least 45 days before the expiry of the limits,

to enable us to consider renewing the limits. Any breach in any of the terms and conditions relating thereto will be considered unauthorised.

<b>(Rs. in Crore)</b>				
<b>Facility</b>	<b>Limit</b>	<b>ROI/Commn.</b>	<b>Margin</b>	<b>Security</b>
SODH	6.00	1 year MCLR (8.60% p.a. at present) + 3.20% + penal interest of 1.00% i.e. 12.80% p.a. at present	25%	<b>Primary:</b> Hypothecation of entire current assets, Stock & Receivables and other current assets both present and future of the company on pari passu basis with SBI.  <b>Collateral:</b> Mentioned below.
ILC/FLC	4.00	Usual Commission	25% Cash Margin*	

**Penal interest of 1% for non conversion of agricultural land is charged in line with SBI.**

.....”

10. The above letter indicates that working capital limit under consortium banking arrangement was renewed for one year, i.e., upto 25.07.2020. The learned Senior Counsel for the Appellant sought to interpret the date of default as 25.07.2020 on the basis of renewal letter. Renewal of sanction for one year is the renewal of working capital limit, as noted in the letter. Renewal of working capital limit is not relatable to the default committed by the Corporate Debtor in fulfilling the obligations under the Sanctioned Facilities. When on 14.02.2020, accounts of the Corporate Debtor were declared as NPA, it clearly means that default was committed by the Corporate Debtor in carrying out his financial obligations. Renewal of sanction has nothing to do with the date of default committed by the Corporate Debtor in fulfilling its financial obligations. Thus, the very basis of the submission of learned Counsel for the Appellant that since



renewal of working capital limit was renewed for one year upto 25.07.2020, hence, the date of default is 25.07.2020, has no basis and is to be rejected.

11. The learned Counsel for the Appellant has referred to Writ Petition filed and the Appeal filed in the Calcutta High Court. The learned Counsel for the Appellant has referred to order dated 19.10.2020 passed in APO/111/2020, which was an Appeal filed by M/s Rajgaria Timber Pvt. Ltd. & Ors. vs. State Bank of India & Ors., challenging order of learned Single Judge dated 25.09.2020. The Calcutta High Court vide order dated 19.10.2020 has only directed the SBI to decide the issue with regard to entitlement of the appellants to 270 days' credit. It is contended that the said issue is pending consideration by the SBI. The said order passed by the Calcutta High Court has no relevance with regard to issues raised in the present Appeal. The Writ Petition was filed against the SBI, in which Canara Bank was neither the party nor any order is issued to the Canara Bank. The learned Senior Counsel for the Appellant in the additional affidavit has referred to two Writ Petitions, which have been filed by the Appellant in the Hon'ble Supreme Court, being Writ Petition (C) No.3 of 2021 in the matter of Ananya Woods Pvt. Ltd. vs. Union of India, in which Writ petition filed under Article 32, the Canara Bank was not the party. Further, the Writ Petition was dismissed as withdrawn. Further, another Writ Petition was filed by the Corporate Debtor in the Hon'ble Supreme Court under Article 32, being Writ Petition (C) No.1057 of 2023, which also got dismissed as withdrawn on 06.10.2023. The Writ Petitions filed by the Corporate Debtor in the Hon'ble Supreme Court were all dismissed as

withdrawn and we fail to see any relevance of the said proceedings before Hon'ble Supreme Court with respect to issues, which have arisen in this Appeal.

12. We, thus, are of the view that Application under Section 7 filed by Canara Bank was not barred by Section 10A as contended by the Appellant. The Adjudicating Authority having found the debt and default, has rightly proceeded to admit Section 7 Application. In paragraph 16 of the order, the Adjudicating Authority has noted all relevant factors to be considered in Section 7 Application and has proceeded to answer the said issues in favour of the Financial Creditor.

13. We, thus, do not find any error in the impugned order passed by the Adjudicating Authority admitting Section 7 Application. There is no merit in the Appeal. The Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

**[Arun Baroka]**  
**Member (Technical)**

**NEW DELHI**

**7<sup>th</sup> May, 2024**

Ashwani