

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

Company Appeal (AT) (Insolvency) No. 1289 of 2024

[Arising out of Order dated 04.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court-V, New Delhi Bench in Company Petition IB (IBC) No.718/ND/2022]

In the matter of:

Bikram Bhadur

...Appellant

Vs.

Union Bank of India & Anr.

...Respondents

For Appellant:

Mr. Sajeve Deora, Mr. Nikhil Kohli, Miss Akshaya Ganpath, Advocates.

For Respondents:

**Ms. Ekta Choudhary, Mr. Divyank Dutt Dwivedi, Advocates for UBI.
Mr. Atul Bhatia, Advocate for the RP.**

**J U D G M E N T
(05th December, 2024)**

Ashok Bhushan, J.

This appeal by a Suspended Director of the Corporate Debtor has been filed challenging the order dated 04.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal) Court-V, New Delhi Bench admitting an application under Section 7 filed by the Union Bank of India. Appellant aggrieved by the order of admission has filed this Appeal.

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

2.1. The Corporate Debtor- 'M/s. I World Business Solutions Pvt. Ltd.' availed credit facilities from the State Bank of India. Erstwhile Andhra Bank (now Union Bank of India) took over existing facilities sanctioned by the State Bank of India vide its sanction order dated 16.09.2014. The facilities were renewed by erstwhile Andhra Bank. Andhra Bank vide sanctioned letter dated 23.07.2019 reviewed and renewed the existing working capital limits for a further period of one year. By sanction letter dated 16.09.2017, Andhra Bank issued a sanction for cash credit of Rs.50,00,00,000/- and Bank Guarantee renewal of Rs.10,00,00,000/- on the rate of interest and other conditions as contained in the sanction letter. By sanction letter dated 16.09.2020, Union Bank of India sanctioned Funded Interest Term Loan of Rs.3,21,63,265/- with maximum tenure of six months upto 31.03.2021. Repayment was to be made by six monthly instalment commencing from 06.03.2020. Interest was to be serviced as and when debited to the account. Due to the problems faced by the Corporate Debtor during the COVID-19 period, Union Bank of India sanctioned Rs.10 Crores as Guaranteed Emergency Credit Line (GECL) with moratorium of 12 months and repayable in 48 equated instalments. Interest liability to be discharged as and when due. The documents including undertaking, guarantee etc. were also issued in reference to the aforesaid facilities. On 25.03.2021, sanction letter was issued reviewing and renewing the existing working capital limits i.e., the Cash Credit and Bank Guarantee, including the GECL for a further period of six months. On 31.03.2021, Union Bank of India classified the accounts of the Corporate Debtor as a Non-Performing Asset. A notice under Section 13(2) of the SARFAESI Act, 2002 was issued by the Union Bank of India to

the Corporate Debtor on 09.06.2021 communicating outstanding amount as on 31.03.2021 of Rs.66,98,47,775/-. The notice was also issued to the personal guarantor. Two bank guarantees were also invoked of Rs.5 Crore each.

2.2. On 24.09.2022, Union Bank of India filed a Section 7 application claiming debt of Rs.76,61,82,565/- in default as on 30.06.2022. Date of default was mentioned as 31.03.2021. In Section 7 application, reply was filed by the Corporate Debtor. One of the pleas raised in the reply was that application under Section 7 was barred by Section 10A. Appellant filed its rejoinder-affidavit to the reply. On 07.08.2023, Additional-Affidavit was filed by the bank bringing certain additional facts and documents including the bank statements of the corporate debtor on record.

2.3. Adjudicating Authority heard the Counsel for the parties and by impugned order dated 04.06.2024, admitted Section 7 application. Adjudicating Authority in the impugned order accepted 31.03.2021 as date of default. Adjudicating Authority held that the amount of default is more than the threshold limit of Rs.1 Crore. The argument raised by the Corporate Debtor that the application is barred by Section 10A was not accepted. It was held that account was running overdue prior to 01.03.2020. Adjudicating Authority also has upheld the date of default as 31.03.2021 on which date NPA was declared. Aggrieved by the impugned order, this Appeal has been filed.

3. We have heard Shri Sajeve Deora, Learned Counsel for the Appellant, Ms. Ekta Choudhary and Shri Divyank Dutt Dwivedi, Learned Counsel for

the Union Bank of India and Shri Atul Bhatia, Learned Counsel for the Resolution Professional.

4. Counsel for the Appellant submits that the sanction of Funded Interest Term Loan of Rs. 3,21,63,256/- on 16.09.2020 was during 10A period and any default in the aforesaid facility cannot be a ground to initiate any application under Section 7. It is further submitted that the Corporate Debtor has been paying the EMIs regularly and by 1st, 2nd, 3rd and 4th EMI, extra amount was paid and only 5th EMI, there was default of Rs.54,19,562/- and there was overdue amount of 5th and 6th EMIs. Counsel for the Appellant during course of submission has submitted an "EMI repayment chart", according to which, total amount due as on 31.03.2021 is Rs.1,09,28,247.22/-. Counsel submits that with regard to facility under "Guarantee Emergency Credit Line" of Rs.10 Crore, out of which amount of Rs.4,65,00,000/- was unilaterally adjusted by the bank. It is submitted that on 25.03.2021, when sanction letter was issued by the Bank there can be no default on the part of the borrower. Issue of sanction letter on 25.03.2021 fully proves that there was no default on 25.03.2021 and there was no occasion to declare the account NPA on 31.03.2021. Date of default, if any, was during Section 10A period and application was clearly barred by Section 10A. Referring to EMI repayment chart, learned counsel for the Appellant submits that as on 31.03.2021, amount available in cash and credit account was Rs.2,23,35,461/- and bank should have transferred the amount of Rs.1.09 Crore from cash and credit account to take care of the due amount of Rs.1.09 Crore as on 31.03.2021. It is submitted that the

default has been deliberately generated by the Union Bank of India to initiate proceeding under Section 13(2) of the SARFAESI Act. The application filed by the bank was clearly barred by Section 10A and deserves to be rejected.

5. Counsel for the Bank refuting the submissions of the Appellant submits that the Appellant failed to pay the amount due and outstanding as per the repayment schedule under the sanction letter dated 16.09.2020 of the funded interest term loan. FITL itself is a component of cash credit. Maximum period to repay the amount under FITL facility was 31.03.2021. The Sanction letter dated 25.03.2021 would come into effect only if the FITL was zero as on 31.03.2021. Sanction letter dated 25.03.2021 was never given effect to. It is submitted that as per RBI Guidelines, the account is classified as NPA not account wise but borrower wise, hence, on account of continuous default on any one account, the account would be classified as NPA. NPA declaration as on 31.03.2021 was in accordance with the RBI guidelines. The account was overdue as on 01.03.2020 and after declaration of the account as NPA, there was continuous default subsequent to Section 10A period. In Section 7 application, the detailed calculation of dues as on 30.06.2022 was mentioned which was much more than the threshold of Rs.1 Crore. Counsel submits that there being default by the Corporate Debtor prior to 01.03.2020 and also subsequent to 10A period, there is no error committed by the Adjudicating Authority in admitting Section 7 application.

6. Counsel for the IRP submits that in pursuance of the order of the Adjudicating Authority admitting Section 7 application, IRP has issued publication on 14.06.2024 and has constituted the CoC on 05.07.2024. Resolution Professional has received the claims of the Financial Creditors, Unsecured Financial Creditors and Operational Creditors to the extent of Rs.220,40,35,101/-.

7. We have considered the submissions of the Counsel for the parties and perused the record.

8. As noted above, financial facilities were taken by the corporate debtor from the State Bank of India which was subsequently undertaken by the Andhra Bank (now Union Bank of India). Andhra Bank has reviewed and renewed the financial facilities from time to time. By sanction letter dated 23.07.2019 issued to the Corporate Debtor, OCC renewal was granted for Rs.50 Crores and BG/SBLC was of Rs.10 Crores. Corporate Debtor had issued a Revival Letter dated 30.08.2019 to the Branch Manager of the Bank admitting outstanding as on 31.07.2019 as Rs.50,73,04,993.72/-. Revival Letter issued by the corporate debtor is part of Section 7 application filed by the bank which was filed in Annexure A-21 to the Section 7 application which is to the following effect:-

“REVIVAL LETTER

*Place: New Delhi
Date: 30.08.2019*

To

*The Branch Manager
Connaught Circus Branch
New Delhi*

Dear Sir,

Sub: Renewal of Limits

I/ We have been sanctioned the following limits:

<i>Facility</i>	<i>Limit</i>
<i>OCC</i>	<i>50,00,00,000/-</i>
<i>BG/SBLC</i>	<i>10,00,00,000/-</i>
<i>Total</i>	<i>60,00,00,000/-</i>

For a period of one year

*I/We have executed the documents for the above limits on
18.09.2017*

*As the period has expired, now at my/our request the bank
has renewed the limits for further period of One Year subject
to the terms and conditions contained in the sanction letter
ng. 0084/01/S+15 dated 08.07.2019 which are acceptable
to me/us.*

*The amount due to the bank under the facilities sanctioned
to me/us is:*

<i>Facility</i>	<i>Outstanding as on 31.07.19</i>	<i>Remarks</i>
<i>OCC</i>	<i>50,73,04,993.72</i>	<i>Inclusive of interest upto 31.07.2019</i>
<i>BG/SBLC</i>	<i>10,00,00,000.00/-</i>	
<i>Total</i>		

*In addition to the above, Bank Guarantee of Rs. 100000/-
availed against 100% cash margin.*

I/We admit and acknowledge the same and undertake to repay the above together with interest thereon as per the terms and conditions stipulated by the bank and further agree and assure that the loan documents executed by me/us at the time of availment of the said facilities continue to be enforceable and binding on me/us.

I/We also agree that all the securities offered by me/us shall continue to be available to the bank till the amounts due and may become due from time to time hereafter are fully paid.

M/s I world Business Solutions Pvt. Ltd.

I/We also admit and agree for the above terms and conditions.

(CO-OBLIGANT/ GUARANTORS)”

9. Thus, even prior to Section 10A period, there is clear acknowledgment by the corporate debtor that there is outstanding amount. During 10A period, two facilities were extended first on 16.09.2020 funded interest term loan (FITL) of Rs.3,21,63,265/- which was repayable by 6th monthly instalment commencing from September 2020. No moratorium was provided and interest to be serviced as and when debited. In the additional affidavit which was filed by the bank before the Adjudicating Authority, statements of account of the Corporate Debtor have been brought on record which indicate that amount of more than Rs.1 Crore was due as on 31.03.2021. Even according to the statement, EMI repayment chart submitted by the

Appellant during the course of hearing indicate that there is overdue amount of 5th and 6th EMI and according to own statement of the Appellant, amount due on 31.03.2021 was Rs.1,09,28,247/-.

10. In Section 7 application, the Bank has filed a calculation sheet with regard to all the four accounts of the borrower as on 30.06.2022. In all the four accounts, the amount as claimed in Part IV were due. The chart annexed with Section 7 application is as follows: -

“CALCULATION SHEET

FACILITY	AMOUNT SANCTIONED/DISBURSED	AMOUNT OUTSTANDING ON THE DATE OF DEFAULT/DATE OF NPA 31.03.2021	INTEREST ACCRUED	TOTAL OUTSTANDING AS ON 30.06.2022	DAYS OF DEFAULT
Cash Credit- 008413100000830	50,00,00,00/-	47,76,63,538.32	60740806.2	53,84,04,344.52	456
FITL- 008430100010350	3,21,63,265/-	1,08,67,156.36	0.0	1,08,67,156.36	456
GECL2.0-0084301000 10457	10,00,00,000/-	10,00,00,000.00	10888960.9	11,08,88,960.9	456
BG Invoked- 014127040000001	5,00,00,000/-	4,65,21,803.00	5491665.76	5,20,13,468.76	456
BG Invoked- 014127040000002	5,00,00,000/-	4,46,92,986.00	9315648.52	5,40,08,634.52	456

11. When we look into the calculation chart, it is clear that the amount has been calculated w.e.f. 31.03.2021. The amount was claimed due on the date of filing of the application. The above calculation chart further clearly state that there was default committed by the corporate debtor even after 10A period. There was continuous default after 10A period which was much more than the threshold amount. Counsel for the Appellant has contended that the bank has treated the date of NPA as date of default which is not in accordance with the RBI guidelines.

12. In the above context, we may refer to the judgment of the Hon'ble Supreme Court in ***"Laxmi Pat Surana vs. Union Bank of India & Anr.- (2021) 8 SCC 481"*** where Hon'ble Supreme Court has held that 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 of the Code. The above observations of the Hon'ble Supreme Court has been quoted with approval by the Hon'ble Supreme Court in ***"Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal and Another- (2021) 6 SCC 366"***. We may refer to paragraph 43 of the judgment of the Hon'ble Supreme Court in *Laksmi Pat Surana* which lays down 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. Thus, when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before the expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act. Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 IBC enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 IBC. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 IBC.”

13. Adjudicating Authority has also relied on the judgment of this Tribunal in **“Jagdish Prasad Sarda Vs Allahabad Bank- Company Appeal (AT) (Insolvency) No.183 of 2020”**. In paragraph 11 of the impugned order, Adjudicating Authority has made following observations:-

"11. Further, on perusal of Part- IV in the application, we observe that the applicant has treated the date of NPA i.e. 31.03.2021 as the date of default. It is pertinent to mention that Date of NPA is to be treated as date of default in consideration of order of Hon'ble NCLAT in the case of Jagdish Prasad Sarada Vs. Allahabad Bank [CA (AT) (Insolvency) No. 183 of 2020. The relevant extract of the Hon'ble NCLAT's judgment is as under:

"10. The Hon'ble Supreme Court has already observed in Civil Appeal No. 439, 436, 3137, 4979, 5819 & 7289 of 2018 in B.K. Educational Services Pvt. Ltd Vs. Parag Gupta and Associates dated 11.10.2019 that the limitation period for application under section 7 of the Code is 3 years as provided by Article 137 of the Limitation Act, 1963 which commences from the date of default and is extend able only by application of section 5 of Limitation Act, 1963 if any case for condonation of delay is made out. The view taken by the Hon'ble Apex Court in 'B.K. Educational Services Company Appeal (AT) (Insolvency) No. 183 of 2020 Private Limited Vs. Parag Gupta and Associates' that the limitation period for application under Section 7 of the I&B Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of The Limitation Act, 1963 if any case for condo nation of delay is carved out, has again been reiterated in the latest pronouncement of Hon'ble Apex Court in 'Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. (Civil Appeal No.6347 of 2019) decided on 14th August, 2020. It is therefore manifestly clear

that. date of default will be the date of declaration of account as NPA and such date of default would not shift."

14. There can be no dispute to the proposition that no application can be filed under Section 7 for a default which has been committed by a borrower during 10A period. Thus, even if we exclude the default committed by CD during 10A period, default on 31.03.2021 which is taken as date of default in Section 7 application was more than threshold amount of Rs.1 Crore which was sufficient to initiate proceedings under Section 7 against the borrower. Further as noted above, default by the borrower was even before the 10A period which is clear from acknowledgment letter dated 30.08.2019, as extracted above. Section 7 application was filed on 24.09.2022 and the amount of interest calculated from 31.03.2021 till the date of filing of the application also even if principal amount is not included was much more than the threshold amount for initiating CIRP against the corporate debtor.

15. The facts of the present case, as noted above, clearly indicate that the borrower is liable to undergo insolvency resolution process and the application under Section 7 filed by the Bank cannot be thrown out on the bar of Section 10A. There being default prior to Section 10A period and subsequent to 10A period, as noted above, order of the Adjudicating Authority admitting Section 7 application need no interference. We, however, observe that the Resolution Professional while computing the admitted claim of the bank has to necessarily exclude the amount which was defaulted during 10A period. It is well settled that at the time of

admission of Section 7 application, Adjudicating Authority is not called upon to determine the amount of claim of the Financial Creditor who initiated Section 7 application, and those issues are to be left for Resolution Professional to be determined at the time of collation and admission of the claim. The amount of claim which has been admitted by the Resolution Professional is not in question before us in this Appeal. We, however, in view of the legal position that default during 10A period cannot be basis for any proceeding under Section 7 only observe that any amount defaulted during 10A period need not be included in the claim admitted of the Appellant.

16. Subject to observations as made above, we dismiss the Appeal.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi

Anjali