

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

**Company Appeal (AT) (Insolvency) No.837 of 2023**

(Arising out of Order dated 09.06.2022/09.06.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-IV in CP(IB) No.841/MB-IV/2022)

**IN THE MATTER OF:**

Pradeep Madhukar More  
Suspended Director of Syntex Trading & Agency  
Private Limited,  
Shop No. 28, 1<sup>st</sup> Floor,  
Krishna Arcade, Yashwant  
Shrusti Khaira, Boisar,  
Palgar Thane, Maharashtra – 401501.

... Appellant

Vs

Central Bank of India  
Corporate Finance Branch,  
1<sup>st</sup> Floor, MMO Building,  
M.G Road, Fort, Mumbai- 400 001,  
Maharashtra

... Respondent

**Present:**

**For Appellant: Mr. Ritin Rai, Sr. Advocate with Ms. Pallavi Pratap, Mr. Mridul Yadav, Ms. Muskan Jain, Ms. Ritika Sinha and Mr. Aman Shukla, Advocates.**

**For Respondent: Mr. Manoj Swarup, Sr. Advocate with Mr. Tushar Singh, Ms. Akshra Akshi, Mr. Neelmani Pant and Mr. Nikhil Sabri, Advocates.**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

This Appeal has been filed against the order dated 09.06.2023 passed by National Company Law Tribunal, Mumbai Bench-IV by which order Company Petition (IB) No.841/MB-IV/2022 filed by Central Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016

(hereinafter referred to as the “**Code**”) was admitted. The Suspended Director of the Corporate Debtor aggrieved by the order has come up in this Appeal.

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

- (i) The Central Bank of India vide Sanction Letter dated 24.03.2015 sanctioned Term Loan of Rs.125 crores to Anjana Retail Infrastructure Pvt. Ltd. Vide Sanction letter dated 05.12.2016, Term Loan of Rs.187.50 crores was sanctioned to one RJ Texcot Private Limited. On 02.08.2018, Anjana Retail Infrastructure Pvt. Ltd. and RJ Texcot Private Limited merged with the Corporate Debtor vide order dated 02.08.2018 passed by the NCLT, Mumbai. Vide letter dated 23.09.2021, i.e. Term Loan-III, Rs.155/- crores were sanctioned.
- (ii) In view of the outbreak of Covid-19 pandemic, the Reserve Bank of India published Master Circular dated 06.08.2020 for Resolution Framework for Covid-19 related stress.
- (iii) Default was committed by the Corporate Debtor in regard to above three Term Loan on 30.09.2020 and the Corporate Debtor was ascertained as NPA on 29.12.2020.
- (iv) Under the Regulation Framework for Covid-19 dated 06.08.2020, One Time Restructuring Proposal (“**OTR**”) was requested by the Corporate Debtor and the same was

sanctioned by letter dated 21.05.2021 by the Central Bank of India by executing OTR. As per the OTR, the Corporate Debtor was granted 'interest moratorium' of 16 months in respect of loans between 01.11.2020 to 28.02.2020 and with regard to 'principal moratorium' the period of 18 months was granted. The Corporate Debtor defaulted under the OTR Agreement in making the payment of principal and interest amount on 31.03.2022. On 04.05.2022, the Central Bank of India sent a default notice calling the Corporate Debtor to make payment towards the outstanding dues.

- (v) The Corporate Debtor having defaulted in making the payment of interest and principal amount by 31.03.2022, an Application under Section 7 of the Code was filed by the Central Bank of India (the Respondent herein), claiming total due of Rs.420,13,90,040.33. In the Application notice was issued by the Adjudicating Authority. A reply was also filed by the Corporate Debtor. The Corporate Debtor also filed an IA No.350 of 2023 for dismissal of petition. In the IA among other grounds, one of the grounds was that the claim of the Applicant is hit by Section 10A of the Code.
- (vi) The Adjudicating Authority heard the parties and by impugned order admitted Section 7 Application. The Adjudicating Authority rejected the IA No.350 of 2023 and in paragraph 6.1

held that the petition is not barred by Section 10A. Aggrieved by the said order this Appeal has been filed.

3. We have heard Shri Ritin Rai, learned Senior Counsel for the Appellant and Shri Manoj Swarup, learned Senior Counsel for the Respondent.

4. The learned Senior Counsel for the Appellant submits that as per its own case of the Central Bank of India (hereinafter referred to as the “**Bank**”), the default was committed by the Corporate Debtor on 30.09.2020 and Corporate Debtor’s was declared NPA on 29.12.2020, both are hit by Section 10A period. It is submitted that OTR Agreement dated 21.05.2021 refers back to the default to 30.09.2020. Shri Ritin Rai has referred to RBI Circular dated 06.08.2020 and submits that as per Clause 48 of the Circular when the borrower commits default, the borrower shall be downgraded to NPA from the date of implementation of the Resolution Plan or the date from which the borrower had been classified as NPA before implementation of the Plan, whichever is earlier. It is submitted that admittedly, before implementation of the Plan, the Corporate Debtor was declared NPA on 29.12.2020, which date has to be referred to for default as per the Circular dated 06.08.2020. For Section 7 Application in the present case, date of default has to be treated as 30.09.2020 and date of NPA as 29.12.2020, which date is also mentioned in Section 7 Application. Both the dates being covered by Section 10A, Application was clearly barred by time. It is submitted that default under OTR Agreement relates

back to the default prior to implementation of OTR Agreement. Hence, the Application filed under Section 7 is barred by Section 10A and the date of default is not 31.03.2022 as mentioned in the Application, but 30.09.2020 which date is covered under 10A period.

5. Shri Manoj Swarup, learned Senior Counsel for Central Bank of India refuting the submissions of the Appellant submits that Section 7 Application was filed on the default committed by the Corporate Debtor on 31.03.2022 under the OTR Agreement and the Application was not based on the default committed on 30.09.2020. The learned Senior Counsel has referred to various clauses of the OTR Agreement and submits that by OTR Agreement, the Original Loan Agreement stands amended/ modified and for any default committed thereunder the OTR Agreement has to be looked into and not the original loan Agreement. It is submitted that the payment under the OTR Agreement was to be repaid commencing from 31.03.2022 and when default is committed under the OTR Agreement, the said default is covered under Section 7 Application. The original Loan Agreement, thus, has not to be looked into for default and default which is the basis of Section 7 Application is the default under OTR Agreement, which default took place on 31.03.2022. Hence, the Application was not barred by Section 10A and Adjudicating Authority has rightly rejected the plea of the Corporate Debtor.

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

7. We have noted that three Term Loans were sanctioned by the Central Bank of India, i.e., Term Loan-I, Term Loan-II and Term Loan-III. The default was committed by the Corporate Debtor in repayment of the Term Loans on 30.09.2020, hence the NPA was declared on 29.12.2020. The Reserve Bank of India to mitigate the hardship and financial stress caused due to Covid-19 pandemic, issued Circular dated 06.08.2020. Paragraphs 2 and 3 of the Circular are as follows:

*“2. The economic fallout on account of the Covid-19 pandemic has led to significant financial stress for borrowers across the board. The resultant stress can potentially impact the long-term viability of many firms, otherwise having a good track record under the existing promoters, due to their debt burden becoming disproportionate relative to their cash flow generation abilities. Such wide spread impact could impair the entire recovery process, posing significant financial stability risks.*

*3. Considering the above, with the intent to facilitate revival of real sector activities and mitigate the impact on the ultimate borrowers, it has been decided to provide a window under the Prudential Framework to enable the lenders to implement a resolution plan in respect of eligible corporate exposures without change in ownership, and personal loans, while classifying such exposures as Standard, subject to specified conditions. The details of the facility are given in the Annex.”*

Under the heading “Post Implementation Performance” in paragraphs 46, 47 and 48, following have been stated:

***“ Post Implementation Performance***

**46.** *For personal loans, after implementation of the resolution plan in terms of this facility, the subsequent asset classification will be governed by the criteria laid out in the Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated July 1, 2015 or other relevant instructions as applicable to specific category of lending institutions.*

**47.** *In respect of exposures other than personal loans, any default by the borrower with any of the signatories to the ICA during the monitoring period shall trigger a Review Period of 30 days.*

*Monitoring period, for this purpose, is defined as the period starting from the date of implementation of the resolution plan till the borrower pays 10 percent of the residual debt, subject to a minimum of one year from the commencement of the first payment of interest or principal (whichever is later) on the credit facility with longest period of moratorium.*

**48.** *If the borrower is in default with any of the signatories to the ICA at the end of the Review Period, the asset classification of the borrower with all lending institutions, including those who did not sign the ICA, shall be downgraded to NPA from the date of implementation of the resolution plan or the date from which the borrower had been classified as NPA before implementation of the plan, whichever is earlier.”*

8. Under the aforesaid Circular dated 06.08.2020, the Corporate Debtor made a request for OTR, which was sanctioned by the Bank vide its letter

dated 21.05.2021. The sanctioned letter dated 21.05.2021 approved five things, which is as follows:

*“CBI/C\*b/2021-22/188*

*Date: 21.05.2021*

*M/s Syntex Trading & Agency Pvt. Ltd.  
16, 6<sup>th</sup> Floor, A C Market Bldg;  
731/2 Malviya Marg,  
Tardeo Mumbai*

*Dear Sir,*

*Reg: One Time Restructuring (OTR) Proposal of the company in line with RBI's circular dated August 6, 2020 on “Resolution Framework for COVID-19 related Stress.*

*Ref: Your request for OTR.*

*We are pleased to inform you that our Management Committee of the Board at Central Office in its Meeting held on 21.05.2021 has approved the following:*

- i. Restructured our existing Term Loans; Term Loan-1, Term Loan-2 and Term Loan-3, with total balance outstanding of Rs.351.67 crore as on cut-off date of 25.11.2020.*
- ii. Extended the Repayment schedule of Term Loan-1 & Term Loan-2 by 18 months under OTR (over and above 7 months already allowed under RBI regulatory packages with commencement of Repayment period from 31.03.2022.*
- iii. Extended the Repayment Period of Term Loan-3 by 13 months under OTR with commencement of Repayment Period from 31.03.2022.*
- iv. Approved to fund the interest on T1,1,T1, II and T1, III for the period November 2020 to February 2022 as Fresh FITL, of Rs.51.71 crore with ROI @ 8% repayable in 24 equal monthly installments from March 2022 to Feb 2023. Interest on FITL will be serviced as and when applied.*
- v. Permitted reversal of the excess charged interest on Term Loan (Over the proposed FITL Interest Rate of 8% as per OTR plan) amounting to Rs.0.62 crore*

*approximately for the period November 2020 till date of implementation.”*

9. Item No.IV in the above letter clearly indicates that Fresh Funded Interest of the Term Loan of Rs.51.71 crore was sanctioned, which was disbursed to the Corporate Debtor from 21.05.2021 to 02.03.2022. Rupees 51.71 crores was to be repaid in 24 months equally installments from March 2022 to February 2024.

10. The OTR Agreement which was part of Section 7 Application is relevant to notice. The OTR Agreement was with regard to Term Loan-I, Term Loan-II and Term Loan-III issued by the Central Bank of India. In Clause-H, restructuring was granted to the outstanding original loans under Circular dated 06.08.2020. Clause-H of the Agreement is as follows:

**“H.** *Owing to the above stated conditions of Business due to COVID-19 pandemic, the Board of Directors of the Borrower vide their resolution dated \_\_\_\_\_ authorised the Borrower to seek restructuring of the below mentioned outstanding Original Loans aggregating INR 400.27 Crores (“Outstanding Loans”) under Reserve Bank of India ‘Resolution Framework for COVID 19 Related Stress’ dated August 6, 2020 (“Resolution Framework”):*

<i>Facility</i>	<i>Outstanding Amount (Rs. in Crores)</i>
<i>TL-1</i>	<i>64.00</i>
<i>TL-II</i>	<i>136.98</i>
<i>TL-III</i>	<i>150.69</i>

Term Loan-BOB	48.60”
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11. Clause-J, of the OTR Agreement reads as below:

**“J.** *In order to record the terms of Resolution Plan and Sanction Letter, the Parties hereto have agreed to amend/ supplement/ modify the Original Loan Agreements and other existing financing and security documents as set out in Second Schedule hereto (“Existing Finance Documents”), on the terms and conditions of the Restructuring Sanction Letters.”*

12. Moratorium period was granted with respect to the Loans – Interest moratorium, Principal moratorium as well as for FITL. Moratorium period, which is defined in the definition clause, is as follows:

**““Moratorium Period” shall mean:**

*With respect to Loans:*

*‘Interest moratorium’ the period of 16 months between 01.11.2020 to 28.02.2022.*

*‘Principal moratorium’ the period of 18 months (over and above 6 months from 01.03.2020 to 31.08.2020 already allowed by RBI).*

*With respect to FITL:*

*‘Principal moratorium’ the period between November 2020 to February 2022.”*

13. Sub-clauses (a) to (h) of Clause 2.1 - Restructuring of Loan of the OTR Agreement is as follows:

**“2.1 Restructuring of Loans**

- a) *The Parties agree and acknowledge that the Outstanding Loans and FITL, as of the Cut-off Date are as under*
- a. *Outstanding Loans (Loans): INR 400.27 Crore, which include the following*
    - i. *TL-I : INR 64.00 Crore*
    - ii. *TL-II : INR 136.98 Crore*
    - iii. *TL-II : INR 150.69 Crore and*
    - iv. *Term Loan-BOB: 48.60 Crore and*
  - b. *FITL: INR 59.15 Crore, which includes the following*
    - i. *TL-1, TL-II & TL-III: INR 51.71 Crore*
    - ii. *Term Loan-BOB : INR 7.44 Crore*
- b) *Upon execution of this Agreement all the rights and obligations of the Parties under the Original Loan Agreement and other Existing Finance Documents shall stand supplemented by the rights and obligations under this Agreement.*
- c) *The Parties agree that the provisions of Original Loan Agreement and other Existing Finance Documents shall, unless specifically identified and amended by these presents, and all covenants, representations, warranties, events of default and all benefits available to the Lenders thereunder shall thereunder shall continue to be in full force and effect and only those provisions thereof shall be amended, restated and replaced in their entirety by this Agreement and the provisions hereof to the extent specifically agreed between the Lender and the Borrower herein. For the avoidance of doubt, the provisions of the Existing Finance*

*Documents, which are not inconsistent with the provisions of this Agreement, shall continue to be binding on the Borrower, Lender and the other parties to such Existing Finance Documents.*

- d) The determination by the Lenders as to whether a provision of any Finance Document inconsistent with the term of this Agreement shall be final and binding on the Borrower.*
- e) Subject to the aforesaid, on and from the Effective Date, this Agreement shall constitute the entire agreement between the Parties concerning the Outstanding Loans and FITL, and supersedes all previous proposals, agreements, understandings, negotiations and other written and oral communications in relation thereto.*
- f) The disbursements already made in terms of the Original Loan Agreement shall be deemed to be part of the Loans and shall be governed by the terms and conditions of this Agreement.*
- g) In case of any consistency between the terms of this Agreement and the terms of the Restructuring Sanction Letters of the Lenders, the Restructuring Sanction letter shall prevail over this Agreement to the extent of such inconsistency.*
- h) The Parties acknowledge and agree that any amounts paid by the Borrower, post the Cut-off Date, towards repayment of instalment of Loans of FITL, shall be adjusted towards future interest liability on the Loans and FITL.”*

14. The above Clause 2.1 clearly indicates that after execution of the Agreement, all rights and obligations of the Parties shall stand supplemented by the rights and obligations under the Agreement. The Restructuring Agreement stand substituted. Clause 2.6 provides for repayment, which is to the following effect:

**“2.6 Repayment**

- (i) The Borrower shall repay the principal amount of the Loans and FITL in structured monthly instalments commencing from 31.03.2022 after the end of Moratorium Period and as more specifically provided in the Amortisation Schedule. The Borrower shall repay the FITL in the manner provided in the Amorisatation Schedule.*
- (ii) Without prejudice to the rights of the Lenders under the Finance Documents, in the event of insufficiency of funds, the Borrower shall repay the Loans and FITL on pro-rata basis.*
- (iii) The Lenders may, in suitable circumstances, revise or vary the repayment of the principal amounts of the Loans and FITL, which has been disbursed or the balance outstanding for the time being or any installment(s) of the said principal amounts under the Loans and FITL, or any part thereof upon such terms and conditions as may be decided by the Lenders in consultation with the Borrower.”*

15. Clause 8.1 deals with Event of Default. Clause 8.1 (a) and (b) provides as follows:

**“8.1 Event of Default**

*Each of the following events shall constitute an Event of Default under this Agreement:*

- (a) Default by the Borrower in the payment of any installment of the principal amount under the Loans and FITL on the Due Date.*
- (b) Default by the Borrower in payment of any installment of interest on the Loans and FITL on any Interest Payment Date.”*

16. Clause 8.2 deals with Consequences of Event of Default, which is as follows:

**“8.2 Consequences of Event of Default**

*If one or more of the events specified in this Section (hereinafter called ‘Events of Default’) happen(s), the Lenders may in their sole discretion exercise one or more of the following rights:-*

- a) direct the Lenders to declare the entire Facilities or part thereof and all amounts payable by the Borrower in respect of the Facilities and under the Transaction Documents to be due and payable immediately.*
- b) the Security Interest shall become enforceable.*
- c) enter upon and take possession of the assets/ properties charged/ hypothecated mortgaged pursuant to the Transaction Documents.*
- d) transfer the assets of the Borrower in favour of the Lenders/ Lead Lender (acting for the benefit of Lenders) or its nominees and/ or assignees such other person or persons either by way of lease or leave & license, sale, transfer, assignment comprising the security.*

- e) *substitute themselves or any one of them or its nominees and its designee for the Borrower under any or all of the Project Document(s) and to pursue any other legal remedy or right provided under Applicable Law, including but not limited to, taking appropriate action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as may be amended/modified from time to time.*
- f) *terminate the right of the Borrower to make any withdrawals from out of the Facilities.*
- g) *Appoint, from time to time, one nominee on the Board of the Borrower (such director is hereinafter referred to as the “Nominee Director”) and remove the Nominee Director at any time during the currency of this Agreement; and*
- h) *Any other remedies that may be recorded as such in the other Finance Documents.”*

17. Clause 8.2 (e) clearly contemplate that in the event of default, the Lenders in its own discretion is entitled to any other legal remedy or right provided under the Applicable Law. Thus, the event of default as contained in the Restructuring Agreement, can trigger any legal proceedings and Application under Section 7.

18. We may now notice the pleading in Section 7 Application, which is the basis for filing of Section 7 Application. Paragraph-IV, Item-2, which

deals with amount claimed to be in default and the date on which the default occurred, contains following:

“2. Amount claimed to be in default and the date on which the default occurred (Attach the workings for computation of amount and days of default in tabular form)

Total Dues – Rs.420,13,90,040.33 (Rupees Four Hundred and Twenty Crore Thirteen Lakhs Ninety Thousand and Forty and paise Thirty Three Only) as on 29.05.2022 along with interest & other charges.

As per One Time Restructuring (OTR) sanction, default amount is as follows:

<b>Account No.</b>	<b>Interest Default (Rs.)</b>	<b>Principle Default (Rs.)</b>	<b>Total Default (Rs.)</b>
3477749319	63,25,737.00	1,67,00,000.00	2,30,25,737.00
3584012656	1,40,36,237.00	2,34,00,000.00	3,74,26,237.00
3794693317	1,35,71,903.00	1,76,00,000.00	3,11,71,903.00
5106517570	35,09,369.56	2,15,00,000.00	2,50,09,369.56
<b>Total</b>			<b>11,66,43,246.56</b>

\*Company has defaulted in paying the March 2022 Interest & Installment.

Total Dues of the Company as on 29.05.2022

(Bifurcation)

<b>Account No.</b>	<b>Facility</b>	<b>Principal Outstanding</b>	<b>FITL Outstanding</b>	<b>Other charges (Penal interest @ (IR) # 5106517570 )</b>	<b>Total Outstanding</b>
3477749319	Term Loan	60,66,98,460.79	51,71,00,000.00	38,51,05,439.49	420,13,90,040.33

358401265 6	Term Loan	127,67,23,7 74.04			
379469331 7	Term Loan	141,57,62,3 66.01			
<b>Total</b>		<b>329,91,84, 600.84</b>	<b>51,71,00,00 0.00</b>	<b>38,51,05,43 9.49</b>	<b>420,13,90,04 0.33</b>

#includes penal interest of Rs.4,78,20,334 @ 1.00%p.a.

- The FITL principal amount of Rs.51,71,00,000.00 has been disbursed towards servicing of the Interest of the Original 3 Term Loan accounts of the Company during the moratorium period allowed from November 2020 to February 2022 as per the OTR sanction terms.
- The Actual interest dues including penal interest towards all the three term loan accounts of the company as of 29.05.2022 would be Rs.90,22,05,439.49 if the said FITL of Rs.51,71,00,000.00 would not have been disbursed for servicing the interest of the three Term Loans during the moratorium period allowed from November 2020 to February 2022 as per the OTR sanction terms.

**Date of Default** – 31.03.2022 (Under OTR)

**Date of NPA** – 29.12.2020

**NOTE:-**

The Corporate Debtor had requested for One Time Restructuring (OTR) under Resolution Framework for COVID-19 related Stress announced by RBI vide its circular dated 06.08.2020 and the same was sanctioned by the Financial Creditor. However, the Corporate Debtor failed to honor the debt obligations under OTR and has defaulted towards repayment of

*Principal & Interest with the Financial Creditor which have fallen due for repayment on 31.03.2022*

*As per the sanctioned terms of OTR, on account of default towards non-payment of Principal and interest to the financial Creditor, the said accounts of the Corporate Debtor were downgraded to SMA-2 category with effect from on 31.03.2022 and on account of continuous default for 30 days from the date of default i.e. 31.03.2022; the accounts have slipped to NPA on 30.04.2022.*

*Under RBI guidelines on Resolution Frameworks for COVID-19 related stress dated 06.08.2020 & 07.09.2020, If the borrower is in default with any of the signatories to the ICA (Inter Creditor Agreement) at the end of the review period, the asset classification of the borrower with all the lending institutions, including those who did not sign the ICA, shall be downgraded to NPA from the date of implementation of Resolution plan or the date from which the borrower had been classified as NPA before implementation of the Plan, whichever is earlier.*

*Since OTR has failed in the account, the actual date of NPA was ascertained at 29.12.2020 (90 days from actual date of actual default i.e., 30.09.2020). Further as the OTR has failed in the account, all the concessions pertaining to the OTR sanction have been withdrawn and the dues have been calculated manually as per the last sanction prior to the implementation of OTR.*

*Prior to the implementation of One Time Restructuring (OTR) in the account as per the OTR sanction, the loan account of the Corporate Debtor slipped to NPA on*

*31.03.2021, the CBS system has applied the interest in all the three accounts till March 2021 as per the existing sanction (Sanction prior to OTR). And the Financial Creditor have taken the outstanding as on 31.03.2021 and calculated the dues in all the accounts.*

*Working computation of the amount/ Ledger of the Applicant is herein under Exhibit-“C”.*

19. Section 7 Application, thus, has been filed on the basis of default committed by the Corporate Debtor on 31.03.2022 as per OTR Agreement. Section 7 Application is thus based on event of default as per Clause 8.1 of the OTR Agreement and date of default has been clearly mentioned as 31.03.2022 under the OTR Agreement. It is also to be noted that date of NPA has been mentioned as 29.12.2020 as per Clause 48 of the Circular of the RBI dated 06.08.2020.

20. After having noticed the relevant Clauses of the Circular dated 06.08.2020 issued by the RBI and restructuring sanction dated 21.05.2021 as well as Restructuring Agreement dated 21.05.2021, now we proceed to consider as to whether Application filed by the Central Bank of India was barred by Section 10A. Section 10A of the Code was inserted in Code to prevent the corporate persons, which are experiencing distress being pushed into insolvency proceedings under the Code for some time. Section 10A of the Code provides as follows:

***“10A. Suspension of initiation of corporate insolvency resolution process.***

*Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

*Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25<sup>th</sup> March, 2020.”*

21. Section 10A makes it clear that no Application shall ever be filed for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) if the default occurred during the Section 10A period. What is prohibited was initiation of proceeding under Section 7, 9 and 10 for any default committed by the Corporate Debtor pre 10A period. When we look into Section 7 Application filed by the Corporate Debtor, the Application is not filed on a default under 10A period, rather it was filed on event of default, which has occurred under the One Time Restructuring Agreement dated 21.05.2021, which default occurred on 31.03.2022, when the Corporate Debtor failed to pay interest installments as well as principal installments, which were due by that time. The submission, which has been pressed by the learned Counsel for the Appellant is that default under Restructuring Agreement has to

relate back to the original default which in the present case was during 10A period being default on 30.09.2020. In this regard reliance has been placed on Clause 48 of the of the RBI Circular dated 06.08.2020. We have noticed that Clause 48 under the heading “Post Implementation Performance”. The Clause deals with Post Implementation Performance of the Corporate Debtor. Clause 47 provides that any default by the Corporate Debtor with any of the signatory during the monitoring period shall trigger a review period of 30 days. Clause 48 has to be read in line with other clauses under the heading “Post Implementation Performance”. Insertion of Clause 48 is that when the borrower defaults, asset classification of the borrower with all lending institutions, shall be downgraded to NPA from the date of implementation of the Resolution Plan or the date from which borrower has been classified as NPA before implementation of the Plan, whichever is earlier. As per Clause 48, the asset classification of the borrower shall be downgraded to NPA with effect from 29.12.2020, which was an earlier date on which borrower has been classified as NPA. Clause 48 thus is with regard to asset classification of the borrower and as per Clause 48, even if default is committed under the Post Implementation Performance under the One Time Restructuring Agreement, the asset classification has to be downgraded as NPA from the date of default, which was committed before implementation of the Plan. In the present case, there was default committed before implementation of the Plan, as NPA was declared on 29.12.2020. Hence, in the present case, asset classification of the borrower has to be treated to be downgraded with

effect from 29.12.2020. Clause 48, is thus only to be read with regard to downgrading to NPA for the relevant date and this Clause 48 is not relevant to find out event of default, which occurred under the One Time Restructuring Agreement and which is foundation of Section 7 Application.

22. As noted above, the event of default under the One Time Restructuring Agreement, which contained in Clause 8.1 as extracted above and by virtue of Clause 8.2, which contains heading “Consequences in event of default”, the lenders in its own discretion can exercise or pursue any other legal remedy or right provided in any other applicable law. Thus, when event of default under the One Time Restructuring Agreement happens, the said event of default shall form foundation of any legal action as per Clause 8.2. The One Time Restructuring Agreement, which is entered between the parties, i.e., the Corporate Debtor and the Central Bank of India and is binding on the parties. The event of default is clearly contemplated and event of default is default by the borrower in making payment of installment of principal amount or installment of interest on the lines of FITL or any interest payment. Default under Clause 8.1 can be committed only after implementation of the One Time Restructuring Agreement and the default referred to under Clause 8.1 is not a any default under the Original Loan Agreement. As noted above, by the One Time Restructuring Agreement an amount of Rs.51.71 Crores was granted as Fresh Funded Interest of the Term Loan, which was disbursed to the Corporate Debtor and default with regard to the said amount can be committed only when there is a default in repayment of FITL disbursement.

23. The learned Senior Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in **Rakesh Kymal vs. Siemens Games Renewable Power Pvt. Ltd. – (2021) 3 SCC 224**, in which case the Hon'ble Apex Court had occasion to consider Section 10A. The underlying rationale for the insertion of Section 10A has been noted in paragraph 17 of the judgment, which is to the following effect:

*“17. The financial distress caused by the outbreak of COVID-19 provides the backdrop to the insertion of Section 10-A. The underlying rationale for the insertion of Section 10-A has been explained in the recitals to the Ordinance, which are extracted below:*

*“... AND WHEREAS COVID-19 Pandemic has impacted business, financial markets and economy all over the world, including India, and created uncertainty and stress for business for reasons beyond their control;*

*AND WHEREAS a nationwide lockdown is in force since 25-3-2020 to combat the spread of COVID-19 which has added to disruption of normal business operations;*

*AND WHEREAS it is difficult to find adequate number of resolution applicants to rescue the corporate person who may default in discharge of their debt obligation;*

*AND WHEREAS it is considered expedient to suspend under Sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 to prevent corporate persons which are experiencing distress on account of unprecedented situation,*

*being pushed into insolvency proceedings under the said Code for some time;*

*AND WHEREAS it is considered expedient to exclude the defaults arising on account of unprecedented situation for the purposes of insolvency proceeding under this Code;”*

*(emphasis supplied)*

Further, in paragraph 18 and 19, following has been laid down:

**“18.** *Section 10-A is prefaced with a non obstante provision which has the effect of overriding Sections 7, 9 and 10. Section 10-A provides that:*

*(i) no application for the initiation of the CIRP by a corporate debtor shall be filed;*

*(ii) for any default arising on or after 25-3-2020; and*

*(iii) for a period of six months or such further period not exceeding one year from such date as may be notified in this behalf.*

**19.** *The proviso to Section 10-A stipulates that “no application shall ever be filed” for the initiation of the CIRP of a corporate debtor “for the said default occurring during the said period”. The Explanation which has been inserted for the removal of doubts clarifies that Section 10-A shall not apply to any default which has been committed under Sections 7, 9 and 10 before 25-3-2020.”*

24. In the above case an Application under Section 9 was filed on 11.05.2020 whereas an Ordinance No.09/2020 was Promulgated by the President of India from 05.06.2020, by which Section 10A was inserted in

the Code. It was contended that the Application was filed prior to Ordinance when Section 10A was brought into force, which argument was rejected. The ratio of the judgment is well settled that with regard to a default committed under Section 10A, no Application can ever be filed for the said default. Thus, what is prohibited is initiation of proceedings for any default committed during 10A period. In the present case, Application under Section 7 was not filed for default committed during 10A period, rather the Application was specifically filed for default committed under the OTR Agreement, which is committed on 31.03.2022, which was much subsequent to 10A period. The mentioning of date 29.12.2020 as NPA in Section 7 Application was on account of Clause 48 of the RBI Circular dated 06.08.2020, which downgraded the Corporate Debtor in event of any default committed under One Time Restructuring Agreement. By mentioning NAP date, i.e., 29.12.12020, which was in obedience of the Clause 48, no benefit can be made by the Appellant by contending that Application was filed for default during the 10A period.

25. For the reasons aforesaid, we conclude that Application under Section 7 of the Code filed by the Central Bank of India was not for any default committed during 10A period, rather the Application was filed for default committed on 31.03.2022 under the One Time Restructuring Agreement dated 21.05.2021 and the event of default under One Time Restructuring Agreement happened only on 31.03.2022, giving right to the Financial Creditor to take recourse of Section 7 Application, which was rightly done in the facts of the present case. We are, thus, of the view that

no error has been committed by the Adjudicating Authority, admitting Section 7 Application.

26. There is no merit in the Appeal, the appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]  
Chairperson**

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

**NEW DELHI**

**26<sup>th</sup> September, 2023**

Ashwani