NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1286 of 2026

(Arising out of the Order dated 16.07.2026 passed by the National Company Law Tribunal, Mumbai Bench- II, in Company Petition (IB) No. 232/MB/2023)

IN THE MATTER OF:

Siddharth Satish Katariya
Ex-Director,
Superfine Metals Pvt. Ltd.
Having Its Registered Office At:
Gate No. 53b, Bhalwani 17 Km Stone, Taluka Parner, Maharashtra-414103 **…Appellant**

Versus

1. Central Bank of India Limited
Through its authorised Representative
Mr. Amit Kumar, Chief Manager, House No. 16, Main Mathura Road, Badarpur Gaon,
New Delhi – 110044
And
Having Its Central Office At "Chandermukhi" Nariman Point, Mumbai – 400021
And
Main Branch Ahmednagar, Laxmibai Karanja Opposite Samachar Press, District Ahmednagar-414 001 And Regional Head Office At: P-56, Nagapur MIDC, Near Bsnl Office
Ahmednagar-414111 **…Respondent No. 1**

2. Mrs. Megha Agarwal
Interim Resolution Professional,

Superfine Metals Pvt Ltd. Office At: 001, Shivranjini Apartments, In Circle Of Congress Nagar Garden Congress Nagarm,
Nagpur – 440012

…Respondent No. 2

Present

For Appellants	**:**	Mr. Krishnendu Datta Sr. Adv. with Mr. Saurav Agarwal, Mr. Akhil Sachan, Mr. Lalit Katriya, Mr. Arjun Goind, Ms. Sunanda Tulysan, Ms. Shweta Patnaik, Mr. Kashish Maheshwari & Ms. Monali Solanki, Advocates
For Respondents	**:**	Mr. Kunal Tandon Sr. Adv. with Mr. Tushar Singh, Ms. Akshara Arshi, Mr. Pratyaksh Bhadoria, Ms. Vansikha Dubey, Advocates for R-1 Mr. Vikram Pradeep, Ms. Neha Rajpal & Mr. Anay Khandelwal, Advocates for R-2/IRP

J U D G E M E N T

(01.09.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e Siddharth Satish Katariya, who is the ex-director of Superfine Metals Pvt. Ltd. **(“Corporate Debtor”)**, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (‘**Code**’) against the Order dated 16.07.2026 ("Impugned Order") passed by the National Company Law Tribunal, Mumbai Bench-II **("Adjudicating Authority")** in Company Petition (IB) No. 232/MB/2023.

Central Bank of India (Bank) who is the Financial Creditor of the Corporate Debtor, is the Respondent No.1 herein.

Mrs. Megha Agarwal, who is the Interim Resolution Professional, is Respondent No. 2, herein.

2. The Appellant submitted that it is a MSME unit and is engaged in the manufacture, processing, sale, distribution, import and export of ferrous, non-ferrous and alloy extruded products, including aluminium, copper and brass sections, pipes, channels, dies, chemicals, extrusion equipment and machinery.

3. It is the case of the Appellant that only issue that falls for determination in this Appeal is whether the provisions of Section10A of the Code stand attracted to the Section 7 Application filed by the Bank. The proved date of default, as recorded with the Information Utility and admitted in Part IV of the unamended Form 1. This falls squarely within the suspension period i.e., 25.03.2020 upto 24.03.2021 under Section 10A of the Code (10A). The Bank's attempt to amend its pleadings to contrive earlier dates of 10.03.2020 and 24.03.2020 is untenable, being contrary to its own statutory filings and documentary record. It is the case of the Appellant that the Bank, by an amendment to Section 7 Application, cannot withdraw the admissions in the pleading. The Appellant submitted that in any case, the proviso to sub section 5 Section (7) does not mean that the admission in the pleadings can be withdrawn by the Bank. Further, the interlocutory order dated 06.05.2024 permitting Bank to amend the date of default, which had affected the decision of the Adjudicating Authority and had not been appealed from, even though an appeal lay, can be challenged with the final judgement in terms of Section 105 of CPC. The Appellant pleaded that it is open to this Appellate Tribunal, which had not earlier considered the matter, to investigate into an Appeal from final judgement the grievance of the Appellant in respect of the interlocutory order.

4. The Appellant contended that Bank originally filed the Section 7 Company Petition claiming an aggregate default of Rs.92,45,80,781/- arising from four facilities, namely Cash Credit Facility, Term Loan, Funded Interest Term Loan ("**FITL**") and Cash Credit Ad-Hoc facility. Significantly, both the original Form-1 dated 04.02.2023 and the NeSL report relied upon by the Bank recorded 29.11.2020 as the date of default, which was also the stated date of NPA.

5. The Appellant submitted that, in its Affidavit in Reply dated 29.08.2023, the Appellant specifically raised the statutory bar under Section 10A and contended that even if the date of default were reckoned three months prior to the NPA date, the same would be 29.08.2020, which also falls within the Section 10A period commencing from 25.03.2020 to 25.03.2021. The Appellant stated that the Bank did not file any rejoinder to rebut this specific contention and instead sought liberty to alter the date of default.

6. The Appellant contended that, only after becoming aware of the Section 10A objection, Bank filed IA No.5435/2023 seeking extensive amendments to the facilities, sanctioned and outstanding amounts, pleadings relating to default and, most importantly, the dates of default. The Appellant submitted that the proposed amendments did not merely correct or clarify existing pleadings but sought to substitute the original case with an entirely new case having dates of default intended to fall outside the Section 10A period.

7. The Appellant submitted that although the amendment was permitted by the Adjudicating Authority vide order dated 06.05.2024, the Adjudicating Authority kept open the issue of applicability of Section 10A and recorded that the question whether the alleged defaults fell within the Section 10A period was to be decided on merits. Therefore, the mere allowance of the amendment did not render the amended dates of default conclusive or deprive the Appellant of its substantive defence.

8. The Appellant contended that the Bank thereafter substituted the original Form-1 with a new Form-1 dated 30.09.2023 and restricted its claim to only the Cash Credit and Ad-Hoc facilities, alleging dates of default as 10.03.2020 and 24.03.2020 respectively. The amended amounts claimed were Rs.52,47,99,252/- towards the Cash Credit facility and Rs.3,73,78,272/- towards the Ad-Hoc facility. However, the Bank continued to retain 29.11.2020 as the date of NPA. The Appellant submitted that the simultaneous assertion of alleged defaults in March 2020 and NPA classification on 29.11.2020 was inherently inconsistent and required strict scrutiny.

9. The Appellant submitted that the Bank subsequently relied upon the Working Capital Consortium Agreement dated 18.11.2016 and Joint Deed of Hypothecation dated 18.11.2016 to support the amended Cash Credit default date. Since the Bank was unable to satisfactorily explain the computation of the alleged dates of default, the Adjudicating Authority directed, vide order dated 25.04.2025, its senior bank officer to place an affidavit on record stating the correct dates of default. The Appellant contended that the subsequent affidavit dated 30.05.2025 failed to cure the inconsistencies and was specifically disputed by the Appellant in its Reply dated 02.07.2025.

10. The Appellant refuted the contention of the Bank that the default in respect of Cash Credit Facility occurred on 10.03.2020 as untenable for the various reasons;

11. First, no demand was made by the Bank calling upon the Corporate Debtor to pay Rs. 52,47,99,252.30 on or before 10.03.2020 in terms of clause 10 of the Working Capital Consortium Agreement dated 18.11.2016 which makes the entire facility repayable only upon "demand" and the borrower as "defaulter" and the amount "due" as in default.

Second, the Bank exercised its discretion in terms of RBI's COVID-19 circulars dated 27.03.2020 and 23.05.2020 and converted the interest into a FITL of Rs. 3,16,90,762/- new facility.

Third, the Bank reviewed and renewed the facility for Rs.52 Crores and executed Working Capital Consortium Agreement dated 06.11.2020 and Equitable Mortgage dated 06.11.2020.

Further, the Bank's own Drawing Power letters for March and April 2020 exchanged with the other consortium lenders certified a Drawing Power of Rs. 52 Crores for the Cash Credit Limit alleged in default on 10.03.2020.

12. The Appellant submitted that the Adjudicating Authority itself recorded, vide order dated 03.07.2025, that the amended date of default in respect of the Ad-Hoc facility fell within the Section 10A period. The Appellant contended that this material finding remained unchallenged by Respondent No.1 and could not have been subsequently disregarded while adjudicating the Section 7 petition.

13. The Appellant contended that the statutory concept of "default" under Section 3(12) of the Code is the non-payment of a debt when the same becomes due and payable. Read with the definition of "financial contract", the date of default must necessarily arise from the contractual terms governing when the debt became due and payable. The Appellant submitted that the amended dates of 10.03.2020 and 24.03.2020 were not supported by any corresponding contractual stipulation and were introduced only to overcome the Section 10A bar.

14. The Appellant submitted that the Bank's case regarding the Cash Credit facility was fundamentally inconsistent with the admitted NPA date of 29.11.2020 as the Bank itself pleaded that the Appellant's account was regular as on 29.02.2020. Further, its reliance upon the RBI Covid Regulatory Package dated 27.03.2020 was misconceived, as the said package permitted deferment of recovery of interest on Cash Credit facilities for the period from 01.03.2020 to 31.05.2020. Consequently, no default on account of non-payment of such interest could have been validly asserted on 10.03.2020 or continued up to 24.03.2020.

15. The Appellant strongly refuted the allegations of the Bank submitted, with reference to the FITL sanction letter dated 09.09.2020, that arrears of interest pertaining to the period prior to March 2020 remained payable outside the FITL scheme, and that the interest debited on 29.02.2020, becoming payable 10.03.2020, was accordingly excluded from the FITL and remains in default. The Appellant submitted that this reading is untenable on the Bank's own case: The Bank's own amended pleading avers that the account 'was regular on 29.02.2020', and that the Bank was precluded from degrading the account until 31.08.2020 on account of RBI directives, both statements inconsistent with treating the 29.02.2020 interest debit as a pre-existing arrear predating, and excluded from, the RBI relief period. The Appellant elaborated that if the interest in question truly predated the RBI's moratorium window (commencing 01.03.2020),the Bank's own pleaded case that the account remained 'regular' on that very date, and its own reliance on RBI protectionthrough31.08.2020, would be internally inconsistent. In the further alternative, it is submitted that the interest, having been debited on the last day of February and become payableonlyon10.03.2020 falls squarely within, not prior to, the RBI relief window commencing 01.03.2020 and was fully eligible for, and infact received, the benefit of conversion into the FITL, and no default of this component survives.

16. The Appellant also explained that the RBI circulars deferred recovery, and this defers the crystallization of default for Section 7 purposes: The Appellant countered the Bank's logic that the RBI circulars merely deferred the recovery/demand of interest, without affecting its due and payable, and hence defaulted. The Appellant submitted that this analogy does not assist the Bank for the purposes of Section 10A, whatever the position regarding the debt's continued accrual, Section 3(12) of the Code requires actual non-payment of a debt that is due and payable to constitute 'default'. The RBI circulars, being binding regulatory instructions issued under statutory power, constitute such law; recovery of the relevant interest was interdicted for the period 01.03.2020 to 31.08.2020, and default, for the purposes of the Adjudicating Authority's satisfaction under Section7(5) of the code, could not crystallise during that interdicted period.

17. The Appellant further submitted that the subsequent RBI Covid-19 Regulatory Package dated 23.05.2020 permitted deferment of interest recovery from 01.06.2020 to 31.08.2020 and conversion of the accumulated interest into a FITL. Pursuant thereto, the Bank sanctioned an FITL of Rs.3,16,90,762/- on

09.09.2020 towards interest accumulated from March 2020 to August 2020. The Appellant contended that, having credited the accumulated interest up to 31.08.2020 through the FITL mechanism, the Bank could not simultaneously assert a default towards such interest on 10.03.2020.

18. The Appellant submitted that the System Generated Extract relating to the Cash Credit account records 95 days of non-credit and specifically identifies 29.11.2020 as the NPA date. This contemporaneous system-generated record, according to the Appellant, is consistent with the ordinary 90-day NPA mechanism and materially contradicts the subsequently pleaded date of 10.03.2020.

19. The Appellant further contended that the Bank's attempt to justify the Cash Credit default date through the Working Capital Consortium Agreement dated 18.11.2016 was untenable. While relying upon the 2016 agreement, the Bank sought to rely upon payment terms contained in the earlier Sanction Letter dated 28.11.2013, although the facilities were sanctioned pursuant to the Sanction Letter dated 27.05.2016. The Appellant submitted that the alleged stipulation requiring interest servicing on the 10th of each month was not contained in the 2016 Sanction Letter and, therefore, could not constitute the contractual basis for fixing 10.03.2020 as the date of default.

20. The Appellant submitted that the execution of the Joint Deed of Hypothecation and Working Capital Consortium Agreement dated 06.11.2020 further militates against the allegation that a Cash Credit default had already occurred on 10.03.2020. According to the Appellant, these subsequent documents demonstrate that the facilities continued to subsist and were renewed after the alleged date of default.

21. With respect to the Ad-Hoc facility, the Appellant submitted that the Bank relied upon the Sanction Letter dated 26.12.2019 and alleged that the 90-day period expired on 24.03.2020. The Appellant contended that even on the Bank's own contractual basis, the 90-day period would expire on 26.03.2020, which itself falls within the Section 10A period. Further, the Bank's Chief Manager, by letter dated 21.03.2020, expressly acknowledged that the facility was to be serviced on 26.03.2020. Thus, the alleged default date of 24.03.2020 was contrary to the Bank's own contemporaneous document.

22. The Appellant submitted that the Adjudicating Authority's order dated 03.07.2025 had already recorded that the amended Ad-Hoc default date fell within the Section 10A period. The Appellant contended that the Impugned Order failed to reconcile this finding with its subsequent conclusion admitting the Company Petition.

23. The Appellant contended that the amendment permitted by the Adjudicating Authority fundamentally altered the Bank's case by changing the facilities relied upon, the amounts claimed, the pleadings concerning default and the dates of default. The Appellant submitted that such amendment, sought only after the Section 10A defence had been raised, effectively displaced the original cause of action and sought to defeat a valuable statutory defence available to the Appellant.

24. The Appellant further submitted that the Adjudicating Authority, in proceeding on the basis of the amended dates as though they had attained finality merely because IA No.5435/2023 had been allowed. The order dated 06.05.2024 itself preserved the Appellant's objections on merits, including the applicability of Section 10A. Therefore, the Appellant remained entitled to challenge the amended dates during final adjudication.

25. The Appellant contended that the Impugned Order proceeded on the premise that the Cash Credit default occurred on 10.03.2020 and the Ad-Hoc default on 24.03.2020, although the original Section 7 petition, the NeSL report and the original Form-1 had uniformly recorded 29.11.2020 as the date of default. The Appellant submitted that the Adjudicating Authority could not disregard the original pleadings and accept subsequently introduced dates without adequately establishing their contractual and documentary basis.

26. The Appellant submitted that paragraph 4.4 of the Impugned Order does not identify any contractual provision requiring the alleged excess under the Cash Credit facility to be "regularised on or before 10.03.2020". The finding, therefore, lacks a contractual or documentary foundation and fails to establish when the debt actually became due and payable.

27. The Appellant submitted that the Bank's own pleadings regarding NPA classification are also contrary to the orders passed by the Hon'ble Supreme Court during the Covid-19 period. The Appellant submitted that the Bank itself admitted that the account was regular as on 29.02.2020 and that, pursuant to RBI directions, it was therefore precluded from degrading the account until 31.08.2020. The Hon'ble Supreme Court's order dated 03.09.2020 had further directed that accounts which were not declared NPA as on 31.08.2020 were not to be declared NPA until further orders, which continued until 23.03.2021. The Appellant therefore contended that the Bank's explanation for classification of the account as NPA on 29.11.2020 was legally untenable.

28. The Appellant submitted that the subsequent execution of the Joint Deed of Hypothecation and Working Capital Consortium Agreement dated 06.11.2020, after the alleged Cash Credit default date of 10.03.2020, constitutes material contemporaneous evidence inconsistent with the assertion of an existing default. The Appellant contended that the renewal and continuation of the facilities after the alleged default date substantially undermine the Bank's revised case.

29. The Appellant further submitted that the CRILC report maintained by the Reserve Bank of India records disbursals by the Bank to the Appellant even after the alleged dates of default. The Appellant contended that such post-default disbursals are inconsistent with the assertion that the facilities had already undergone default on 10.03.2020 and 24.03.2020 and constitute relevant contemporaneous evidence requiring consideration.

30. The Appellant finally submitted that, prior to pronouncement of the Impugned Order, it had entered into discussions with Edelweiss Asset Reconstruction Company Ltd. for purchase of the Appellant's account with a view to settling the entire outstanding debt. The Appellant contended that continuation of CIRP pursuant to an erroneous admission order would seriously prejudice and potentially defeat such settlement efforts, despite the Appellant's bona fide endeavour to resolve the outstanding dues.

31. In view of the aforesaid facts and circumstances, the Appellant submitted that the Respondent's Company Petition was barred by Section 10A that the subsequently introduced dates of default by the Bank were unsupported by the contractual documents and contradicted by the Bank's own contemporaneous records; and that the Impugned Order failed to properly consider the original date of default, the NPA records, the RBI Covid Regulatory Packages, the subsequent facility documents, the CRILC report and the Adjudicating Authority's own order dated 03.07.2025.

32. Concluding its arguments, the Appellate requested this Appellate Tribunal to set aside the Impugned Order and allow this appeal and to restore its pre-CIRP status forthwith.

33. Per contra, the Bank, the contesting respondent, denied all averments made by the Appellants as misleading and baseless.

34. The Bank submitted that the present Appeal is misconceived and devoid of merit, as the Adjudicating Authority, after considering the contractual documents, Statements of Account and other contemporaneous records, rightly satisfied itself regarding the existence of financial debt and default and admitted the Section 7 Application filed by the Bank. The Bank contended that no ground warranting interference under Section 61 of the Code has been made out by the Appellant.

35. It is the case of the Bank that Section 7 of the Code does not make the date of default a relevant consideration for admission of the application and date of default is only relevant for purpose of determining the limitation period. The bank elaborated that the essential ingredients for admission of Section 7 application by the Adjudicating Authority are: (a) the applicant is a Financial Creditor; (b) a financial debt exists; (c) a default occurred in respect of such financial debt and (d) the amount of default exceeds the threshold prescribed under Section 4 of the Code as on the date of filing of the Section 7 application. Reliance is placed upon *Narayan Mangal v. Vatsalya Builders & Developers Pvt. Ltd,* passed in *Comp AT (Ins) No. 294 of 2023* and *Netafirm Agricultural Financing Agency Pvt. Ltd. v. Baliraja Sarkar Karkhana Ltd.* passed in *Comp AT (Ins) No. 294 of 2023*.

36. It is the case of the bank that the enquiry under Section 7 is confined to the existence of financial debt and default, and once the default occurs, the right to sue arises and if the application is complete and the Adjudicating Authority is satisfied that a default has occurred and that the application is within limitation, the Adjudicating Authority is required to admit Section 7 application.

37. The bank urged us to consider the fact that the date of default is relevant primarily for determining limitation, as held by the Hon'ble Supreme Court in *B. Prashanth Hegde v. State Bank of India & Anr., 2026 SCC OnLine SC 197*, where the Hon'ble Supreme Court held that if the Adjudicating Authority is satisfied from the materials placed before it in the application that all necessary ingredients are satisfied for the admission of an application under Section 7(1) of the Code it may not reject the application for an insignificant omission or non-adherence to the form.

38. The bank contended that the Adjudicating Authority's orders dated 06.05.2024 permitting amendment of the Section 7 Application and order dated 25.04.2025 directing the bank for filing of an additional affidavit were never challenged by the Appellant and, having attained finality, cannot be collaterally assailed in the present Appeal. The bank submitted that the adjudication was therefore required to proceed on the basis of the amended Section 7 Application and the material subsequently placed on record pursuant to the aforesaid orders.

39. The bank submitted that the mere fact that the account was classified as NPA on 29.11.2020 does not determine the date of default for the purposes of Section 7 of the Code. It was contended that the date of NPA and the date of default are distinct, and a financial creditor is required to establish the occurrence of default and that the Section 7 Application is within limitation. Accordingly, the NPA date cannot, by itself, be treated as conclusive of the date on which default occurred.

40. The bank submitted that the amended dates of default were not arbitrary but were founded upon the contractual terms governing the respective facilities. It was contended that the date of default stated in Form-1 serves, inter alia, to demonstrate when the debt became due and payable and to determine limitation, and that the relevant facilities must therefore be examined independently on the basis of their respective sanction and contractual documents.

41. With respect to the Cash Credit facility, the bank submitted that the Cash Credit facility of Rs.52 Crores was sanctioned pursuant to the Revised Sanction Letter dated 24.06.2019. Under the Working Capital Consortium Agreement dated 18.11.2016, interest was calculated on the daily outstanding balance and debited on the last working day of every month or quarter in accordance with banking practice. The bank contended that the liability under the Cash Credit facility is dynamic and depends upon actual utilisation rather than the entire sanctioned limit.

42. The bank submitted that the Statement of Account records that, on 29.02.2020, interest of Rs.48,11,916/-, penal interest of Rs.6,936/- and other charges of Rs.11,800/- were debited to the Cash Credit account. Consequently, the outstanding liability exceeded the sanctioned limit of Rs.52 Crores and continued to remain above the sanctioned limit every month thereafter. According to the bank, this established that the debt had become due and default had commenced from the contractual due date, with the liability continuing thereafter.

43. The bank further submitted that although the interest was debited on 29.02.2020, the Sanction Letter dated 28.11.2013 stipulated that monthly interest was to be serviced on or before the 10th day of the succeeding month. Accordingly, the interest liability became contractually due and payable on 10.03.2020, since the total outstanding had exceeded Rs.52 Crores and the amount of Rs.52,47,99,252/- remained unpaid. The bank contended that the first default under the Cash Credit facility occurred on 10.03.2020 and continued thereafter.

44. The bank contended that the RBI Covid-related regulatory measures relied upon by the Appellant concerned deferment of NPA classification and did not extinguish or alter the contractual obligation to pay amounts when they became due. It was submitted that the regulatory relaxation operated in the context of asset classification and did not determine the existence or date of default under the Code. Thus, according to the bank, classification of the account of the corporate debtor as NPA on 29.11.2020 and the same did not retrospectively alter the earlier contractual default.

45. The bank submitted that the default under the Cash Credit facility was not a solitary or extinguished event but continued subsequently. In support thereof, reliance was placed upon the demand notice dated 29.06.2022 and recall notice dated 02.01.2023, both of which formed part of the Section 7 proceedings. The bank contended that the continued non-payment constituted subsisting debt and default outside the Section 10A period and that the Adjudicating Authority was entitled to ascertain the existence of such default from the entire record.

46. In relation to the Ad-Hoc facility, the bank submitted that the facility was sanctioned under the Sanction Letter dated 26.12.2019 for a period of 90 days from the date of availment. Since Rs.3,70,00,000/- was disbursed to the Corporate Debtor on 26.12.2019, the contractual 90-day period expired on 24.03.2020. The bank therefore contended that the entire amount became due for repayment on 24.03.2020 and that failure to repay the same constituted default on that date, which was one day before 10A window period.

47. According to the bank, the letter written by the bank on 26.03.2020 was an inadvertent error, which was subsequently clarified in its Additional Affidavit dated 30.05.2025 before the Adjudicating Authority. It was contended that an erroneous date mentioned in an isolated communication by the bank could not override the express contractual terms governing the facility, particularly when the error had been explained before the Adjudicating Authority pursuant to its order dated 25.04.2025.

48. It is the case of the Bank that in the present case, the Bank has established the existence of financial debt and default through the sanction letters governing the facilities, the Statements of Account and other contemporaneous documents. The dates of default mentioned in the amended Form-1, namely 10.03.2020 in respect of the Cash Credit Facility and 24.03.2020 in respect of the Ad hoc Facility, have been determined on the basis of the sanction letters governing the respective facilities .

49. The Bank explained that the date of default for Cash Credit Facility : is on 10.03.2020 as the bank initially sanctioned a Cash Credit Facility vide Sanction Letter dated 28.11.2013 , subsequently enhanced to Rs. 52 crores vide Revised Sanction Letter dated 24.06.2019 and Clause 30 of sanction letter dated 24.06.2019 required continued compliance with all other existing terms and Clause 21 of sanction letter dated 28.11.2013 required monthly interest to be serviced by the 10th of every month. The Statement of Account shows that interest of Rs. 48,11,916/- was debited on 29.02.2020, exceeding the sanctioned limit of Rs. 52 crores.

50. The Clause 30 of the sanction letter dated 24.06.2019 is reproduced herein:

> *"30. All other existing terms and conditions to be complied with."*

51. The Bank submitted that this interest, though applied on 29.02.2020, became due and payable on 10.03.2020 and when the Corporate Debtor failed to pay, resulting in the first default on 10.03.2020. The outstanding sum of

Rs. 52,47,99,252/- remained unpaid thereafter and the default continued and the bank referred the Statement of Account.

52. The Bank stated that similar Date of default for Ad Hoc Clause is 24.03.2020. The bank stated that under the Sanction Letter dated 26.12.2019, an Ad hoc Credit Facility of Rs. 3,70,00,000/- was sanctioned for a period of 90 days. The Statement of Account records that the entire amount of Rs. 3,70,00,000/- was disbursed to the Corporate Debtor on 26.12.2019 and were available for utilization from the same day. Therefore, 26.12.2019 is the first day that has to be taken into consideration while computing the 90-day period, and the amount became payable on the 90th day i.e. 24.03.2020. The bank submitted that the Corporate Debtor failed to repay the amount on the due date. Consequently, the amount became overdue, hence default in respect of the Ad hoc Facility occurred on 24.03.2020.

53. The Bank tried to impress us with argument that the defaults in respect of both facilities had already occurred before the commencement of the period contemplated under Section 10A which commenced on 25.03.2020 as Section 10A was introduced to temporarily bar initiation of CIRP for defaults arising during the specified COVID-19 period. It applies only to a default arising during that period it does not retrospectively extinguish a default that had already occurred.

54. It is the case of the Bank in the present case, the relevant dates are:

(i) Date of default for Cash Credit Facility: 10.03.2020;

(ii) Date of default for Ad hoc Facility: 24.03.2020

(iii) Commencement of Section 10A period: 25.03.2020 and both defaults therefore occurred prior to the commencement of the Section 10A period.

55. The Bank stated that in the Cash Credit Facility moratorium was not applicable and was confined only to term loan. The bank pleaded that that, as per the RBI Circulars, the interest applied during the deferment period be converted into a FITL. Accordingly, the Corporate Debtor availed the said facility, and the interest applied during the period from March 2020 to August 2020 was converted into FITL. The same is evident from the FITL Sanction Letter dated 09.09.2020 and the Statement of Account clearly demonstrate that the interest applied in February 2020 was not converted into FITL, whereas only the interest applied during the deferment period, i.e., from March 2020 to August 2020, was converted into FITL and the Corporate Debtor subsequently failed to repay the FITL amount as well.

56. The Bank elaborated that distinction is further evident from the RBI Circular's provisions on SMA/NPA classification. Paragraph 5 refers collectively to moratorium/deferment/recalculation of drawing power, but paragraph 6 separately prescribes how asset classification is determined for term loans and working capital facilities. The bank emphasized that for term loans, classification follows the revised due dates and repayment schedule, whereas for working capital facilities, under paragraph 3, SMA/"out of order" status, is evaluated by reference to accumulated interest applied immediately after the deferment period, read with the revised terms under paragraph 4. The RBI thus maintained the distinction even for asset classification purposes.

57. The bank submitted that the particulars concerning the date of default in Form-1 are principally relevant to demonstrate that the debt had become due and payable and to establish limitation. Therefore, once the financial debt and occurrence of default are established from the record, the Section 7 Application cannot be rejected merely on account of a dispute concerning the precise date of default stated in Form-1, particularly where the application is otherwise within limitation.

58. The bank submitted that the amendment of the date of default was permissible vide order dated 31.08.2023, the Adjudicating Authority permitted the Bank to seek amendment of the Section 7 application regarding the date of default. The Bank filed IA No. 5435 of 2023 seeking such amendment, which was allowed by the Adjudicating Authority vide order dated 06.05.2024. the bank clarified that it is settled law that an amendment application may be filed at any stage of the proceedings before the final hearing. Reliance is placed upon *Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330* wherein the Hon'ble Supreme Court held that while adjudicating a Section 7 Application, if there is an amendment, the Adjudicating Authority is required to look into the amended petition and there is no bar to amendment of the pleading.

59. The bank further submitted that the proviso to Section 7(5) of Code also gives liberty to the Adjudicating Authority to provide an opportunity to the Financial Creditor to amend/rectify the defect in the application, if required. Moreover, in the present case, the said opportunity was availed by the bank and Form-1 was amended. Consequently, the date of default was changed, and the date of default mentioned in Form-1 also corresponds with the Sanction Letters and the Statements of Account. It is further submitted that the Adjudicating Authority allowed such change vide order dated 06.05.2024. However, the said order was not challenged by the Appellant before the Appellate Authority. Section 61 of the code provides a statutory appeal against an order of the Adjudicating Authority; however, the said order was not challenged within the prescribed period and, therefore, the same attained finality. The Adjudicating Authority rightly decided the Section 7 Application on the basis of the amended application. Moreover, the Appellant, having failed to challenge the said order within the prescribed period, cannot now contend that the amendment order has merged into the final Judgment and that the said order can consequently be challenged along with the Impugned Judgment.

60. The bank further contended that, upon the amendment to the Section 7 Application being allowed, the amended pleadings constituted the operative case for adjudication and the unamended pleadings ceased to have relevance. It is therefore submitted that the Appellant could not seek to resurrect the original date of default merely because the original application had contained a different date. According to the bank, the amended dates were permissible and the relevant consideration remained whether financial debt and default existed and whether the application was within limitation.

61. The bank specifically denied the Appellant's contention that the interest dealt with under the FITL arrangement negated the Cash Credit default. It submitted that the interest amount of Rs.48,11,916/- had accrued on 29.02.2020 and was therefore not included in the FITL. Since the said interest became contractually payable on 10.03.2020 and remained unpaid, the bank maintained that the first default occurred on 10.03.2020 notwithstanding the subsequent FITL arrangement.

62. The bank submitted that the Appellant's reliance upon the date of NPA as determinative of default was misconceived. It reiterated that the contractual default under the Cash Credit facility occurred on 10.03.2020 and under the Ad-Hoc facility on 24.03.2020, whereas the subsequent NPA classification on 29.11.2020 was an asset-classification consequence under the applicable RBI framework. The bank therefore contended that the two dates could not be equated for the purposes of Section 7 of the Code.

63. The bank stated that the RBI granted COVID-19 regulatory relief vide its Circulars dated 27.03.2020 ("First Circular") and 23.05.2020 ("Second Circular"), distinguishing between term loans and Cash Credit/Over Draft ("CC/OD") facilities. For term loans, Paragraph 2 provided a three-month moratorium on instalments falling due from 01.03.2020 to 31.05.2020, subsequently extended to 31.08.2020. In contrast, Paragraph 3 applicable to CC/OD facilities permitted only deferment of interest recovery for the relevant period, and no moratorium was there on this facility. This deferment was likewise extended up to 31.08.2020, with an option, at the lender's discretion, to convert the accumulated interest into a FITL repayable by 31.03.2021. The Bank explained that the RBI thus used two distinct expressions for two distinct categories: "moratorium" for term loans and "deferment" for cash credit/overdraft facilities. This distinction is substantive, not semantic. For term loans, the moratorium shifted the repayment schedule and due dates; for cash credit/overdraft facilities, relief was confined to recovery of interest applied during the deferment period. The Appellant cannot use "COVID-19 moratorium" as a generic expression to contend that every contractual obligation under every credit facility stood suspended. Had RBI intended parity between CC/OD facilities and term loans, there was no need to separately prescribe deferment for cash credit/overdraft facilities.

64. The bank submitted that the RBI Circulars dated 27.03.2020 and 23.05.2020 provided regulatory relaxation in relation to NPA classification. According to the bank, where the account was standard as on 29.02.2020, the period from 01.03.2020 to 30.08.2020 was excluded for determining the out-of-order status, resulting in classification of the account as NPA on 29.11.2020. It is contended that such regulatory relaxation did not erase a contractual default that had already occurred.

65. With regard to the Appellant's reliance upon the communication dated 21.03.2020 by the Bank's official to the Appellant, concerning the Ad-Hoc facility, the bank reiterated that the contractual 90-day period from the date of disbursement on 26.12.2019 expired on 24.03.2020. It submitted that the reference to 26.03.2020 was merely an inadvertent error and had already been explained in the Additional Affidavit filed by the bank on 30.05.2025 before the Adjudicating Authority. Therefore, the bank contended that the mistaken date in the bank's letter could not displace the contractual repayment date.

66. The bank submitted that the Appellant's challenge based upon the original Section 7 Application was no longer sustainable after the amendment had been duly permitted. It contended that the amended application alone was required to be examined and that the existence of financial debt, occurrence of default and limitation stood established from the amended pleadings and supporting documents. The bank further maintained that the Appellant had not disputed the existence of the underlying financial debt or the continuing non-payment, but had principally sought to contest the date from which default was reckoned.

67. The Bank stated that the Appellant's reliance on ***J.C. Flowers Asset Reconstruction Pvt. Ltd. v. Laxmi Oil and Vanaspati Pvt. Ltd.,*** *Comp. App. (AT) (Ins.) No. 1052 of 2022*, is misplaced and distinguishable on facts and on the applicable regulatory framework in the present case. The Appellant treats the COVID-19 package as a uniform moratorium across all facilities, but the RBI Circular does not support this it distinguishes term loans (moratorium) from CC/OD facilities (deferment), and the effect of the Circular must be assessed with reference to the specific facility involved. In the present case, with respect to the Cash Credit Facility, the interest was applied on 29.02.2020, and the said amount was required to be serviced by 10.03.2020. However, the Corporate Debtor failed to discharge the said liability, resulting in a default. The deferment of recovery of interest cannot be equated with a moratorium postponing the due date, as applicable to term loans. The bank elaborated that *J.C. Flowers (Supra)* proceeded on the basis of paragraph 2 of the 27.03.2020 Circular (moratorium on term-loan instalments) and applied it to a Cash Credit Facility, without taking into account Paragraph 3, which specifically governs cash credit/overdraft facilities and provides only for deferment of interest recovery not moratorium. *J.C. Flowers (Supra)* cannot, therefore, be mechanically applied here as it treated the RBI measure as a general moratorium on the Cash Credit Facility without independently examining Paragraph 3. The distinction between "moratorium" and "deferment" determines the nature and extent of relief, and RBI consciously used different expressions and consequences for the two categories.

68. The Bank took pains to explain to us that the present case is governed by Paragraph 3, of RBI circular dated 27.03.2020 and 23.05.2020 under which only the recovery of interest applied during the deferment period was deferred. The obligation to service the interest under the Cash Credit Facility was to be serviced by 10.03.2020 in respect of the interest applied on 29.02.2020, and the Corporate Debtor's failure to discharge the said liability constitutes a default which did not arise during the period covered by Section 10A or during any moratorium. The moratorium contemplated under the RBI Circular was applicable only to term loans and was not applicable to any other facility, including the Cash Credit Facility or Ad hoc facility.

69. It is also the case of the bank that the present case is also distinguishable from J.C. Flowers, (Supra) where the recall notice was issued on 27.08.2020, during the period covered by Section 10A, and was taken into consideration while determining the alleged default. In the present case, first default occurred on 10.03.2020, whereas the subsequent notice under Section 13(2) of the SARFAESI Act dated 29.06.2022 and the recall notice dated 02.01.2023 were issued much later and constituted the other date of default. It is pertinent to note that in the present case the SARFAESI and recall notice has been issued after

10A period which also constitutes the other date of default and clearly established that the debt and default is in existence.

70. The Bank submitted that the Judgment passed by this Appellate Tribunal in J.C. Flowers (Supra) was challenged before the Hon'ble Supreme Court; however, the same was dismissed by a non-speaking order. It is submitted that such dismissal by a non-speaking order does not mean that there is a merger of the Judgment of the Appellate Tribunal with the order of the Hon'ble Supreme Court, nor can such dismissal be treated as a declaration of law by the Hon'ble Supreme Court under Article 141 of the Constitution.

71. The Bank emphasized that the record of default/information utility is not the sole basis for ascertaining default. Section 7(3) of the Code requires the Financial Creditor to furnish the record of default with the Information Utility or such other record/evidence of default as specified. Section 7(4) of the code requires the Adjudicating Authority to ascertain default from IU records or other evidence furnished by the Financial Creditor. Regulation 2A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 further permits furnishing, inter alia, certified bankers'-book entries or an order of a Court/Tribunal adjudicating non-payment. The Information Utility record is thus not the sole or conclusive document for determining default; the Adjudicating Authority may examine the other documentary record, including Statements of Account, sanction letters, contractual documents and other contemporaneous evidence to establish default. Moreover, as per Regulation 20A of the IBBI (Information Utilities) Regulations, the Information Utility is only to ascertain the default and to see whether the said default was ever disputed by the Corporate Debtor or not. In the present case, the Corporate Debtor never disputed the existence of the default. It is pertinent to note that the IU is not the sole document to examine the date of default, and the date of default can be examined from the other documents as well.

72. The bank has relied upon duly certified Statements of Account and the contractual documents governing the facilities to establish debt and default. The date reflected in the Information Utility/NPA record cannot be treated as the sole determinant where the underlying contractual and banking records establish different date of default. The bank stated that in ***Vijay Kumar Singhania v. Bank of Baroda & Anr***., *2023 SCC OnLine NCLAT 2320,* this Appellate Tribunal held that the absence, of an Information Utility record does not by itself defeat a Section 7 application where debt and default are otherwise established from the material on record. It is settled law that the date of default can be established from the pleadings and the documents on record, and non-mentioning of the date of default is not fatal. Reliance is placed upon ***Manmohan Singh v. State Bank of India & Ors.,*** *(2022) 170 SCL 372*, wherein, the date of default was not mentioned in Form1. However, this Appellate Tribunal, after analyzing the entire documentary record, ascertained the date of default and held that non-mentioning of the date of default was not fatal as the same can be ascertained from the documents.

73. It is also the case of the bank that recall/demand notice occurrence of default is not a pre-condition to the occurrence of default the respective facilities were governed by their Sanction Letters, which stipulated the contractual due dates, and the Corporate Debtor was aware of its obligations. Where a contractual liability has become due and payable and remains unpaid, default has occurred within the meaning of Section 3(12) of the Code. Thus, there is no requirement for issuance of a demand notice by the Financial Creditor for the purpose of establishing default under the Code. No notice of demand is required to establish default for the purpose of an application under Section 7 of the Code. The Hon'ble Supreme Court has held that no demand notice is required for filing an application under Section 7 of the Code, and a Financial Creditor may initiate the insolvency process under Section 7 in respect of a default in any financial debt in terms of case *of* ***Power Trust (Promoter of Hiranmaye Energy Limited) v. Bhuvan Madan,*** *2026 SCC OnLine SC 248*.

74. The bank stated that the Code does not prescribe a recall notice as a condition precedent for a Section 7 application where debt and default are otherwise established from the record. The Appellant's contention that default could not arise before issuance of a recall notice is baseless. The Appellant has misconstrued Article 1(10) of the Working Capital Agreement in contending that issuance of a demand/recall notice is a pre-condition for default. That clause does not fall under "Events of Default"; it merely recognizes the Bank's right to demand debt amount from the borrower. Without prejudice to the above, the Bank subsequently issued a notice under Section 13(2) of the SARFAESI Act and a recall notice, on 29.06.2022 and 02.01.2023 respectively both after the expiry of the Section 10A period. These documents also demonstrate the subsistence of the outstanding liability and the other date of default.

75. The bank reiterated that in the present case, the existence of debt and default is ascertained from all the documents that were attached with the Section 7 Application. The documents establishing debt and default are :- a) Sanction Letter dated 28.11.2013; (b) Revised Sanction Letter dated 24.06.2019; (c) Sanction Letter dated 26.12.2019 for the Ad hoc Facility; (d) Statements of Account; e) the SARFAESI Section 13(2) notice; (f) the recall notice; and (g) other contemporaneous documents on record.

76. In this connection, the bank submitted that, the Hon'ble Supreme Court in *Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotel Ltd (2022) 234 Comp Cas 23*, held that Form- 1 of a Section 7 application under the Code cannot be judged by the same standards as a plaint in a suit, and all the documents attached with the Section 7 Application are required to be looked into for establishing whether the application is filed within limitation and whether there is an acknowledgement of debt within three years. Therefore, the same principle is also applicable in the present case.

77. The bank highlighted that the date of default can be distinct from the date of NPA. The accounts became overdue i.e., defaulted on 10.03.2020 and 24.03.2020 respectively, pursuant to RBI's COVID-19 package, downgrading of the accounts as NPA was deferred till 31.08.2020, a protection further extended by the Hon'ble Supreme Court by order dated 03.09.2020 and vacated on 23.03.2021. During this period, as a matter of routine banking practice and to overcome procedural difficulties in technical/financial audit, which may arise the Bank renewed the credit facilities vide letter dated 19.01.2021. The Appellant's characterization of this renewal as a fresh sanction is incorrect. Pursuant to applicable NPA norms and the COVID19 framework, the Bank classified the account as NPA on 29.11.2020. The bank explained that for CIRP purposes, default occurs when a debt becomes due and payable and remains unpaid as in the present case, on 10.03.2020 and 24.03.2020 respectively, both outside the Section 10A period. The subsequent NPA classification on 29.11.2020 does not by itself determine or postpone the date of default; the date of default and the date of NPA can differ depending upon the facts. Reliance is placed on *Laxmi Pat Surana v. Union Bank of India & Anr., (2021) 8 SCC 481*.

78. The bank denied the remaining grounds concerning matters which, according to it, were irrelevant to the limited enquiry under Section 7 of the Code.

It submitted that the Adjudicating Authority was required to determine the existence of financial debt and default and, upon satisfaction of the statutory requirements, admit the application. The bank therefore contended that the additional grounds raised by the Appellant did not affect the validity of the admission order.

79. Summarizing its arguments, the bank submitted that the Bank has clearly established: (a) the existence of a financial debt owed by the Corporate Debtor; (b) default under the Cash Credit Facility on 10.03.2020; (c) default under the Ad hoc Facility on 24.03.2020; (d) that both defaults fall outside the period contemplated under Section 10A of the Code; (e) that the subsequent NPA classification on 29.11.2020 does not alter the dates on which the contractual defaults had already occurred; (f) that the amended Section 7 Application and Additional Affidavit were validly considered by the Adjudicating Authority; and (g) that the financial debt and default stand established from the contractual documents, duly certified Statements of Account and other material on record.

80. The bank submitted that the Adjudicating Authority had considered the relevant sanction documents, Statements of Account, Deeds of Hypothecation, demand and recall notices, amended Section 7 Application and the additional affidavit of the bank officer and had, upon such consideration, concluding that financial debt and default existed outside the period contemplated under Section 10A.

81. The bank reiterated that the Impugned Judgment suffers from no error or infirmity warranting interference by this Appellate Tribunal. Concluding his arguments, the bank requested this Appellate Tribunal to dismiss the appeal.

Findings

82. We note that the core controversy that arises for consideration in the present case is that whether the default(s) relied upon by the Bank, namely, (i) the default under the Cash Credit ("CC") Facility; and (ii) the default under the Ad Hoc Cash Credit Facility, occurred prior to 25.03.2020, or whether such default(s) arose during the period from 25.03.2020 to 24.03.2021, which is the period protected under Section 10A of the Code. The determination of the said issue is material for examining whether the defaults relied upon by the Bank could validly form the basis of the proceedings in view of the statutory bar contained in Section 10A of the code.

83. To understand it better, we have formulated a condensed chronology, as pleaded by the parties and record available with us which are as follows:

Date	Facts in brief
28.11.2013 / 24.06.2019	CC facility sanctioned/renewed, latterly at Rs. 52 Cr. Clause 21: interest serviced by 10th of each month
18.11.2016	Working Capital Consortium Agreement and Joint deed of Hypothecation

26.12.2019	Ad Hoc facility of Rs. 3.70 Cr. disbursed; sanction letter: "adjusted on or before expiry of 90 days from date of availment"
29.02.2020	Interest of Rs. 48.1–48.2 lakh debited on CC account (last day of Feb, leap year)
01.03.2020–31.05.2020 (extended to 31.08.2020)	RBI COVID-19 package: Para 2 — moratorium on term-loan instalments; Para 3 — deferment of recovery of interest on CC/OD facilities
10.03.2020	Bank's amended case: CC interest fell due; default alleged
21.03.2020	Bank's letter states Ad Hoc Cash Credit facility closure fell on 26.03.2020 (not 24.03.2020)
24.03.2020	Bank's amended case: Ad Hoc facility's 90-day period expired; default alleged
25.03.2020 to 24.03.2021	Section 10A protected period
09.09.2020	FITL of Rs. 3,16,90,762 sanctioned — covering interest for March–August 2020 only; February 2020 interest (the sum said to be in default from 10.03.2020) expressly excluded
06.11.2020	Working Capital Consortium Agreement renewed with Respondent Bank as a consortium member
29.11.2020	Account classified NPA
19.01.2021	Bank reviewed/renewed CC facility of Rs. 52 Cr. afresh
04/07.02.2023	Original Section 7 application/Form-1 filed — date of default stated as 29.11.2020 (i.e., the NPA date — squarely within the Section 10A window)

29.08.2023	CD's reply raises the Section 10A bar
31.08.2023	Adjudicating Authority permits Bank to seek amendment
30.09.2023	Bank's amendment application (IA 5435/2023) — substitutes date of default to 10.03.2020 (CC) and 24.03.2020 (Ad Hoc)
06.05.2024	Amendment allowed; Section 10A question expressly kept open for final hearing
25.04.2025	The Adjudicating Authority asked the Bank to file affidavit
30.05.2025	Bank filed affidavit
03.07.2025	NCLT's order records: "Ld. Counsel for the Respondent has demonstrated that the date declared by the bank i.e. 24.03.2020 is wrong. In fact, 90 days facility comes to an end on 25.03.2020 which falls within the prohibited period." Not appealed by the Bank.
16.07.2026	Impugned Judgment — Section 7 application admitted

84. Having heard all the parties, perused the records made available, we frame the following three issues to decide the present appeal.

85. <u>ISSUES</u>

I. <u>Issue 1</u>: Whether the default with respect to Cash Credit occurred in 10A period or outside 10A period?

II. **<u>Issue 2</u>: Whether the default with respect to Ad-Hoc Cash Credit occurred in 10A period or outside 10A period?**

III. **<u>Issue 3</u>: Other Ancillary issues related to above two issues pleaded in the appeal.**

86. Since all these three issues are inter-connected, inter-dependent, we shall deal with all of these three issues in conjoint manner, hereinafter.

87. <u>ISSUE 1-</u> Whether the default with respect to Cash Credit occurred in 10A period or outside 10A period?

88. It is the case of the Bank that interest of approximately Rs. 48.1 lakh, debited on 29.02.2020, in receipt of cash credit facility, became due and payable on 10.03.2020 in terms of Clause 21 of the sanction letter. According to the Bank, failure to make payment on the said date constituted a default in respect of the entire outstanding amount of Rs. 52,47,99,252/-. The Bank, therefore, contended that the debt had become "due and payable" within the meaning of Section 3(12) of the Code, and the subsequent non-payment attracted the consequence of default.

89. The Bank contended that the "deferment" contemplated under Para 3 of the RBI circulars dated 27.03.2020 and 23.05.2020 was distinct from the "moratorium" contemplated under Para 2 of the said circulars, as the former merely postponed recovery or enforcement without altering the date on which the debt became due and payable. On this basis, the Bank submitted that the debt continued to remain due and payable notwithstanding the deferment. The Bank also sought to distinguish *JC Flowers (supra)*, contending that the said decision dealt with the moratorium applicable to term loans under Para 2 of RBI Circulars and did not separately impacted the effect of Para 3 of the RBI's said circulars in the context of a Cash Credit facility.

90. The Bank's principal submission is that the RBI deliberately employed two distinct expressions "moratorium" in respect of term loans and "deferment" in respect of CC/OD facilities. According to the Bank, while a "moratorium" postpones the date on which the instalment becomes due, "deferment" merely postpones recovery without altering the underlying due date. The Bank accordingly contends that this distinction in terminology must be given its due effect while determining the date of default.

91. On the other hand, the Appellant having relied upon the decision of JC Flowers (Supra), of this Appellate Tribunal, which was confirmed by the Hon'ble Supreme Court in Civil Appeal No. 10060 / 2024 (Arising out of Diary No.27083 of 2024), thus attained finality, submitted that the facts are exactly similar in the present case and therefore the ratio of JC Flowers (Supra) is squarely applicable in the present case. The Appellant emphasized that the matter is no more res-judicata and therefore the present appeal is covered under the same. The Appellant also stated that no demand was ever made upon the Corporate Debtor by the bank requiring payment of the specific sum allegedly due, much less the entire facility, by 10.03.2020. Reliance was placed on Clause 10 of the Working Capital Consortium Agreement dated 18.11.2016, under which the facility was stated to be "repayable only upon demand".

92. We take into cognizance that no demand was made by the bank prior to the claimed date of default by bank i.e. 10.03.2020 as the recall was raised on the corporate debtor on 02.01.2023, by the bank.

93. In the absence of any demand in terms of the Clause 10 of contractual stipulation as above, the entire outstanding could not have become immediately payable so as to constitute a default on 10.03.2020, as claimed by the bank. The interest in question fell within the RBI relief window commencing from 01.03.2020, during which recovery stood interdicted by the applicable regulatory directions until 31.08.2020. Consequently, where recovery of the amount was itself legally suspended, the requirement under Section 3(12) of the Code of non-payment of a debt that had become due and payable could not have been satisfied so as to give rise to an actionable default under Section 7 of the code.

94. At this stage we would like to examine the impact of Section 3 (12) of the Code. The Section 3 (12) reads as under: -

> *"'<u>default'</u> means <u>non-payment of debt when whole or any part or instalment of</u> the amount of debt has become <u>due and payable and is not paid by the debtor</u> or the corporate debtor, as the case may be."*

We observe from above definition that the statutory definition makes it clear that the expression “due and payable” comprises two cumulative requirements. The use of the word “and”, rather than “or”, “or/and” between “due” and “payable” is significant. Thus, for a default to be said to have occurred, the debt must have become legally due and must, at the relevant point in time, also be presently payable and recoverable. Mere accrual of an amount or its reflection in the books of account, without the debt having become due and payable, would not, by itself, constitute a “default” within the meaning of Section 3(12) of the Code.

95. We recall the pleadings of the Appellant that the Bank’s own pleadings and contemporaneous conduct disclose an apparent inconsistency in its case regarding the date of default. The Appellant brought to our notice that on the one hand, the Bank treated the account as “regular” as on 29.02.2020 and acknowledged the protection against NPA downgrading until 31.08.2020; on the other hand, it asserted that a default in respect of the very interest debited in that period had already crystallised on 10.03.2020. According to the submission, the two positions cannot readily stand together, and the Bank’s own treatment of the account during the relevant period assumes significance in determining whether a default had, in fact, occurred on 10.03.2020. We find force in the arguments of the Appellant on this account.

96. We are of the opinion that the word "moratorium" for Term Loan in Para 2 of both circular and word "deferment" for Cash Credit finally in Para 3 of both circulars, as far as implications and impact on 10A period of the code, will have same effect. The true ingredient to determine default would be when debt becomes due and payable, in presenti, and in this background, the arguments of the Bank about Para 2 v/s Para 3 implications, of RBI Circular dated 27.03.2020 & 23.05.2020, however impressive it may look, will not be relevant beyond a point. However, we shall deal the emphatic pleadings of the bank on RBI Circular dated 27.03.2020 and 23.05.2020, especially relying on Para 3, particularly difference between "moratorium" and "deferment".

97. For the sake of clarity, we reproduce Para 2 & 3 of both the RBI circulars dated 27.03.2020 and 23.05.2020 referred by bank, which reads as under:

RBI's Circular dated 27.03.2020

> *2.In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing finance companies) ("lending institutions") are permitted to grant a moratorium of three months on payment of all instalments1 falling due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period.*

Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.

3.In respect of working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), lending institutions are permitted to defer the recovery of interest applied in respect of all such facilities during the period from March 1, 2020 upto May 31, 2020 ("deferment"). The accumulated accrued interest shall be recovered immediately after the completion of this period."

(Emphasis Supplied)

RBI's Circular dated 23.05.2020

"2. In view of the extension of lockdown and continuing disruption on account of COVID-19, all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, All-India Financial Institutions, and Non-banking Financial Companies (including housing finance companies) ("lending institutions") are permitted to extend the moratorium by another three months i.e. from June 1, 2020 to August 31, 2020 on payment of all instalments in respect of term loans (including agricultural term loans, retail and crop loans). Accordingly, the repayment schedule for such loans as also the residual tenor, will be shifted across the board. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.

> *3. In respect of working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), lending institutions are permitted to allow a deferment of another three months, from June 1, 2020 to August 31, 2020, on recovery of interest applied in respect of all such facilities. Lending institutions are permitted, at their discretion, to convert the accumulated interest for the deferment period up to August 31, 2020, into a funded interest term loan (FITL) which shall be repayable not later than March 31, 2021."*
>
> *(Emphasis Supplied)*

98. From above, it becomes clear that the RBI COVID-19 Regulatory Package by way of two Circulars dated 27.03.2020, permitting lending institutions like the bank, to grant relief on two distinct classes of credit facilities, term loans and working capital facilities, using two different legal instruments: a moratorium for the term loans and a deferment for the cash credit facilities. This circular permitted commercial banks, co-operative banks, all-India Financial Institutions and NBFCs to grant a 3-month moratorium on all payment of instalments, including principal, interest, bullet repayments, EMIs and credit card dues, falling due between 1st March 2020 and 31st May 2020, in respect of all term loans, with the repayment schedule and residual tenor shifted by three months thereafter.

99. The RBI's second circular issued on 23.05.2020 did not create a new relief, as it merely extended the same package by a further period of three months. It extended the moratorium/deferment for term loan and cash credit facilities respectively, from 1 June 2020 to 31 August 2020, so that the combined relief window ran from 1 March 2020 to 31 August 2020.

100. In this background, we will attempt to ascertain meaning of the terms "Moratorium" vs. "Deferment", used in RBI Circulars. We are conscious that the RBI deliberately used two different words for two different products, and the distinction in this sense is functional, not stylistic. We observe that the term 'Moratorium' is applicable to term loans. It covers the entire amount of term loans i.e. principal, interest, EMI, bullet repayment etc. The whole repayment obligation was pushed back, and the tenor of the loan also got extended correspondingly.

101. On the other hand, the term 'Deferment' is applicable to working capital facilities (cash credit/overdraft). It is noted that since a CC/OD account has no fixed "instalment" (it is a running account), relief here is confined to postponing recovery of interest only. Lending institutions were permitted to defer recovery of interest applied on cash credit/overdraft facilities during 1 March to 31 August 2020, with the accumulated accrued interest to be recovered immediately after completion of that period. The drawing power and margin on such accounts could also be recalculated to ease stress, but the underlying obligation to pay interest was never waived and only its collection date was pushed out.

Thus, moratorium defers the whole instalment on term debt whereas the deferment defers only the interest on running working-capital accounts. Incidentally, neither is a waiver and interest continue to accrue in both cases, and the deferred/accumulated amount becomes payable (or may be converted into a FITL) once the relief period ends.

102. Now we will explore further, the RBI Circulars to understand its impact in the present case. we note that: -

- They were optional/discretionary, granted under a Board-approved policy of each lending institution — not an automatic, blanket suspension of the borrower's obligation.
- Neither was to be treated as "restructuring" or a change in terms — hence no downgrade in asset classification (no automatic NPA/SMA tagging) and no adverse credit-bureau reporting purely on account of availing the relief.
- The second circular clarified the asset-classification mechanics: the moratorium period, wherever granted on term loans, was to be excluded from the count of days past-due for IRAC (Income Recognition and Asset Classification) purposes, and similarly, the deferment period on CC/OD accounts was to be excluded for determining "out of order" status. Thus, it has to be seen that it is a banking-classification device, not a legal extinguishment of default.

- Both operate entirely within the lender-borrower banking relationship and these two circulars of the RBI say nothing about whether "default" has occurred for any other statutory purpose.

103. As a background, we note that Section 10A was inserted by the IBC (Amendment) Act, 2020 (Act 17 of 2020), retrospectively from 5 June 2020. Parliament's intent was to bar the filing of applications under Sections 7, 9 and 10 of the code for a corporate debtor's default occurring on or after 25 March 2020, the embargo initially running for six months and extendable up to one year. In stages it ran the full permissible course, so that the Section 10A period is uniformly treated as 25 March 2020 to 24 March 2021. Section 10A suspended initiation of CIRP under Sections 7, 9 and 10 for any default committed during this period.

104. It is significant to take into consideration the judgement of Hon'ble Supreme Court in *Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd., (2021) 3 SCC 224,* which settled two crucial points: Section 10A bars CIRP for any default occurring on or after 25 March 2020, even if the application was filed before Section 10A itself came into force on 5 June 2020, i.e., the bar is anchored to the date of default, not the date of filing, and it is treated as an absolute, permanent bar for that class of default (not merely a limitation on filing during the window).

105. Having noted the context of RBI COVID guidelines and intent of Section 10A, now we proceed to understand how the RBI Relief and Section 10A actually interact, and we are of the view that the two regimes need to be kept analytically separate, when the two are conflated:

i) The RBI COVID guidelines are banking regulations aimed at asset-classification and cash-flow relief whereas Section 10A is an insolvency-law bar aimed at protecting corporate debtors from loss of management control during the pandemic. One does not automatically govern the other.

ii) The other distinct difference is non-coextensive periods. The RBI relief ran only 1 March 2020 – 31 August 2020. Section 10A runs 25 March 2020 – 24 March 2021 — nearly seven months longer. A default in, say, December 2020 gets no banking relief (the account can be classified NPA) but is still fully protected from CIRP by Section 10A.

iii) RBI relief does not, by itself, negate “default” under Section 3(12) of the code because availing the moratorium/deferment was optional and interest kept accruing, non-payment on the original or rescheduled date can still constitute a “default” in the usual insolvency ecosystem. The exclusion of days, past, due under the RBI circular, affects only the bank’s own asset-classification exercise and it has no bearing on whether the Adjudicating Authority must apply the Section 10A bar in which determination is to be made independently by the Adjudicating Authority on the date of default as pleaded/proved.

106. In this background, we are of the considered view that Section 10A protects only a default that arose within 25.03.2020–24.03.2021; a default that arose before this window and merely continued into or past it is not shielded. Where liability had accrued prior to the Section 10A period and continued through and beyond it, the applicant could not be barred under Section 10A from proceeding under Section 7. The Section 10A bar cannot be extended to a default that continues beyond the moratorium/Section 10A period and the proviso only protects a default confined to that window.

107. Having examined the impact of RBI guidelines on baking relationship and section 10A on insolvency, we do not find any conflict between both different regimes. In fact, we find these were for clear different purposes and targets.

108. Now we will examine the emphatic argument of the bank before us relying on Para 3 of RBI's circular (noted above), which according to the bank permitted it to initiate section 7 application. We reiterate that the RBI moratorium/deferment and Section 10A need to be treated as two independent tests, applied sequentially, never substituted for one another. We need to ascertain the actual date of default under Section 3(12) of the code based on the record (NeSL data, demand notice, loan account statements etc.) independent of whether the account enjoyed RBI relief or not. Subsequently, we need to determine whether that date falls within 25.03.2020–24.03.2021 and if yes, Section 10A bars the application permanently for that default in terms of Ramesh Kymal (supra) and if the default predates or postdates this window (even if the account separately enjoyed RBI moratorium/deferment), Section 10A has no application.

109. We are of the view that because deferment postpones the due date, the interest that was deferred was simply not "due and payable" under Section 3(12) of the code during 1.3.2020–31.8.2020. Thus, the bank cannot plead a default during the deferment window itself on the deferred interest as there was no debt due to default on. This is a factual and contractual point about whether debt-and-default even exists on that date. The consequence that follows, i.e. once the deferment period ends (31.8.2020) and the accumulated interest becomes payable, non-payment then gives rise to a fresh default and 31.8.2020 to 24.3.2021, sits squarely inside the Section 10A window. Thus, for the Cash credit facilities that took deferment, the resulting default will fall inside Section 10A protected period, because of when the default actually occurred, not because deferment was availed.

110. We are fully aware that Section 7 applications is admissible where the default occurred subsequent to the Section 10A and this is supported by ratio of the *Koncentric Investments v. Standard Chartered Bank* (supra) for the proposition that an application confined to post-10A default is not barred. Similarly, if the bank can show the account was already in default i.e. interest overdue, drawing power breached, before 25 March 2020, and that default simply continued through and past the Section 10A window without a fresh cause of action being created, Section 10A does not apply at all.

111. We note that the distinction drawn by the Bank between moratorium and deferment is textually discernible in the RBI circulars; however, such distinction does not, by itself, determine whether a default occurred within the meaning of Section 3(12) of the Code. The expression "due and payable" is a substantive requirement for the existence of a default. Where recovery of the interest stood suspended by binding regulatory directions during the period from 01.03.2020 to 31.08.2020, it is arguable that the amount could not be treated as presently enforceable during such period, irrespective of whether the regulatory relief is described as a moratorium or deferment. This approach finds support in *JC Flowers (Supra)*, wherein, on materially similar facts, the significance of the conjunctive expression "due and payable" under Section 3(12) of the code was recognised. We may add that *JC Flowers* (supra) of this Appellate Tribunal, had attained finality by Hon'ble Supreme Court in Civil Appeal No. 10060 / 2024 (Arising out of Diary No.27083 of 2024).

112. At this juncture, we look into ratio of JC Flowers (supra) as pronounced by this Appellate Tribunal, once again and reproduce the relevant paras which reads as under: -

"50. In the present appeal, the Appellant fairly stated that due occurred on the last date of February, 2020 but was payable on 01.03.2020. Hence, strictly speaking the date of default cannot be 28.02.2020 as claimed by the Appellant in Part IV and at best could be as 01.03.2020 i.e., when it became payable."

"51. Unless the debtor commits default, CIRP against him cannot be initiated under the Code. The words "Due and Payable" used in definition of "default" in section 3 (12) means that the default debt must be subsisting debt. The terms 'default' is defined in Section 3(12) of the Code in very wide terms as non-payment of a 'debt' once it becomes due and payable, which includes non-payment of even part thereof or an instalment. A creditor is not only required to establish the existence of a debt but is also required to prove that the corporate debtor has defaulted in payment of the debt and if he fails to establish the same, the CIRP cannot be initiated by the Adjudicating Authority. In other words, the mere fact of a 'debt' being due and payable is not adequate to justify the initiation of CIRP at the instance of the creditor, unless the 'default' on the part of the Debtor is established."

"54. We observe that as per the Code, it is for the Adjudicating Authority to satisfy himself at the stage of admission of application under Section 7 of the Code that default has occurred w.r.t. the debt was due and payable,

which remains unpaid, then the Adjudicating Authority is required to admit such application. The word to pay such money in praesenti i.e., such debt is due for payment in praesenti or is payable at present i.e., relevant date."

"63. In the background of above details, we note that the alleged date of default has been mentioned as 28.02.20220 (it should have been 29.02.2020 being leap year) as the Appellant mentioned that the instalment become due on the last date of the month and to be payable on 01.03.2020 and as per RBI Circular dated 27.03.2020, the moratorium started from 01.03.2020 for three months which was further extended for further three months. Thus, the Respondent was covered under RBI guidelines and the default could not have been taken as 28.02.2020 or even on 01.03.2020 due to RBI Guidelines and subsequently due to Section 10 A of the Code w.e.f. 25.03.2020."

"65. Arguments of the Appellant that the Corporate Debtor is not entitled to take protection of the RBI letter dated 27.03.2020 r/w 23.05.2020 in addition to Section 10A of the Code, is not convincing and cannot be accepted. The intentions of the letters of RBI as well as the introduction of Section 10A through amendment Act of 2020 was to protect the business from the financial distress adversely affected due to Covid 19 Pandemic and not to push such Corporate Debtor into Insolvency & Liquidation."

> *"66. The Appellant, therefore, was not entitled to initiate the CIRP in the given background of the facts as well as various RBI guidelines and the provisions of Section 10 A of the Code."*
>
> *"67. Based on above analysis and considering all legal and factual issue raised by the Appellant, we are unable to accept any of his pleas and the appeal, therefore, deserves to be rejected. However, the Appellant shall have all the legal recourse and remedies as available in the law, if he chooses to avail, to recover his money from the Respondent. We also note that IBC is meant for sustaining the Corporate Debtor to the extent possible and not to unnecessary send the Corporate Debtor into CIRP or liquidation."*
>
> *(Emphasis Supplied)*

113. We also take into consideration Hon'ble Supreme Court order in the same case of *JC Flowers Asset Reconstruction Pvt. Ltd. vs. Laxmi Oil and Vanaspati Pvt. Ltd. vide Civil Appeal No. 10060 / 2024 (Arising out of Diary No.27083 of 2024)*, which reads as under: -

> *"Delay condoned.*
> *After having heard the learned senior counsel appearing for the appellant and after perusing the impugned judgment, we find no error in the view taken by National Company Law Appellate Tribunal, Principal Bench at New Delhi. The appeal is accordingly dismissed."*

(Emphasis Supplied)

This clearly demonstrates that the Hon'ble Supreme Court, after considering the judgment of the Appellate Tribunal and hearing the matter, passed the order on due consideration of the case, rather than summarily rejecting the appeal against the judgement of this Appellate Tribunal.

114. The core principles emerging from *JC Flowers (Supra)* are that Section 10A does not extinguish the underlying debt and Section 3(12) of the code requires both the elements of the debt having become "due and payable" and its non-payment; and that the creditor must establish the occurrence of a default and cannot rely merely upon the existence of a debt. These principles assume particular significance where the question is not whether the debt exists, but whether it had become actionable as a "default" during the period protected by Section 10A of the code.

115. We are of the opinion that quite apart from the question of "moratorium" or "deferment", the Bank's own treatment of the account assumes significance. The Bank's position that the account was "regular" as on 29.02.2020 and remained protected from adverse asset classification until 31.08.2020 appears difficult to reconcile with its simultaneous assertion that the very interest obligation had crystallised into an actionable default on 10.03.2020. The contemporaneous treatment of the accounts by the Bank are therefore relevant in assessing whether a default, for the purposes of the Code, had in fact occurred on the date asserted. The pleaded documents including a) Sanction Letter dated 28.11.2013; (b) Revised Sanction Letter dated 24.06.2019; (c) Sanction Letter dated 26.12.2019 for the Ad hoc Facility; (d) Statements of Account; e) the SARFAESI Section 13(2) notice; (f) the recall notice; and (g) other contemporaneous documents on record, do not support the cause of the bank.

116. As regards the demand clause, the Bank is correct that issuance of a demand notice is not, as a matter of procedure, a prerequisite for initiation of proceedings under Section 7 of the Code. This position is settled in *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17, and, in the context of Section 10A, in *Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan*, 2026 INSC 166, decided on 18.02.2026. However, the absence of a requirement to issue a demand notice before invoking Section 7 is distinct from the substantive question as to when the debt became "due and payable".

117. Consequently, Clause 10 of the Working Capital Consortium Agreement dated 18.11.2016, which provides that the facility is "repayable only upon demand", cannot be rendered irrelevant merely because a separate demand notice is not a procedural prerequisite under Section 7.

118. We reproduce clause 10 of Working Capital Consortium Agreement, which reads as under: -

> *"10. The borrower hereby covenants with each other of the said banks and unless otherwise agreed to by the said banks or any one or more of them, **the borrower shall repay the said facilities to each of the said banks forthwith on demand of** all such amounts as may be standing at the foot of the said accounts together with interest, compound interest, additional interest, liquidated damages, costs, charges, expenses and other moneys thereon at the rate or rates as may be applicable thereto as set out in the second schedule hereunder written. **Failure of the borrower to repay shall entail in the borrower being treated as a defaulter and the amount due as in default involving the provisions as to defaults as hereinafter stated**."*
>
> (Emphasis Supplied)

119. We hold that the contractual terms remain relevant for determining whether, on 10.03.2020, the amount relied upon by the Bank had become presently payable and recoverable so as to satisfy the statutory ingredients of "default" under Section 3(12) of the code, particularly when the alleged default is sought to be placed outside the permanent bar imposed by Section 10A. Based on our detailed examination and noting all relevant documents and dates, we are unable to accept the bank's contention about correct date of default to be 10.03.2020 for cash credit facilities. This is based on the fact that this debt was not "due and payable" on relevant period especially keeping in view clause 10 of

Working Capital Consortium Agreement noted above. We also note that no demand was made prior to 10.03.2020. We also note that bank converted interest into FITL of Rs. 3,16,90,762/- as new facility, which also does not support cause of the bank. It is also significant to reiterate that bank itself renewed the cash credit facility of Rs. 52 crores and executed fresh Woking Capital Consortium Agreement on 06.11.2020 along with equitable mortgage deed. We have also considered bank's own borrowing power letter in March and April 2020 with other partners of Consortium, certifying cash credit facilities of Rs. 52 crores, although with banks pleaded to us this as internal banking communication. However, we find it relevant to determine in the present case. We fairly observe that although interest was due on 28.02.2020, but became payable only on 10.03.2020 in terms of clause 21 of Sanction letter which reads "monthly interest charged is to be serviced by 10th of every month" and as per RBI's circular, this recovery was forbidden between 01.03.2020 to 31.08.2020 and therefore default could not have happened on 10.03.2020 for cash credit facilities.

120. ISSUE 2-: Whether the default with respect to Ad-Hoc Cash Credit occurred in 10A period or outside 10A period?

121. We note that the Ad Hoc Cash Credit Facility was disbursed/availed on 26.12.2019, with the sanction letter stipulating that the facility was to be "adjusted on or before expiry of 90 days from the date of availment." Excluding 26.12.2019 and reckoning the period from 27.12.2019, the 90th day fell on 25.03.2020. Thus, 25.03.2020 was the last date for adjustment of the facility and not the date of default. In the event of non-payment by the end of that day, the facility would become overdue only on 26.03.2020, i.e. after the commencement of the period protected under Section 10A. This computation is further corroborated by the Bank's contemporaneous letter dated 21.03.2020, which recorded the closure date as 26.03.2020, as well as by the order dated 03.07.2025 passed by the Adjudicating Authority in the present proceedings, which records as under: -

> *"Ld. Counsel for the Respondent has demonstrated that the date declared by the bank i.e. 24.03.2020 is wrong. In fact, 90 days facility comes to an end on 25.03.2020 which falls within the prohibited period."*

122. The question before us that arises for consideration is whether the default under the Ad Hoc Facility occurred on 24.03.2020, as pleaded by the Bank, or whether, upon a proper computation of the stipulated period of 90 days, the facility became due and payable only thereafter, thereby attracting the bar contained in Section 10A of the Code. On consideration of the material on record, the computation advanced by the Appellant merit's acceptance. The Ad Hoc Facility was availed on 26.12.2019 and the sanction terms contemplated adjustment within 90 days "from" the date of availment. Applying Section 9 of the General Clauses Act, 1897, the date of availment is required to be excluded.

123. At this stage, we take into consideration Section 9 and 10 of the General Clauses Act, 1897, which reads as under: -

Sections 9–10, General Clauses Act, 1897

"Section 9: Commencement and termination of time.

***9.** (1) In any [1][Central Act] or Regulation made after the commencement of this Act, it <u>shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"</u>.*

(2) This section applies also to all [2][Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

Section 10: Computation of time.

***10.** (1) Where, by any 1[Central Act] or Regulation made after the commencement of this Act<u>, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open</u>:*

Provided that nothing in this section shall apply to any act or proceeding to which the 6 Indian Limitation Act, 1877 (15 of 1877), applies.

> *(2) This section applies also to all 2[Central Acts] and Regulations made on or after the fourteenth day of January, 1887."*
>
> *(Emphasis Supplied)*

124. Section 9 of the General Clauses Act embodies the principle that where a period is expressed to run "from" a particular day, that day is excluded and the following day is counted as the first day. This principle has been recognised in *Tarun Prasad Chatterjee v. Dinanath Sharma, (2000) 8 SCC 649, and Econ Antri Ltd. v. Rom Industries Ltd., (2014) 11 SCC 769,* and applied by the Hon'ble Delhi High Court in *Jai Durga Enterprises v. Union of India, W.P.(C) No. 7611/2020***.**

125. We note that Bank Sanctioned Ad Hoc Cash Credit Facility on 26.11.2019 and the relevant clause of sanction letter provides that Ad Hoc Cash Credit is to be adjusted on or before the expiry of 90 days from the date of availment. The 90-day period, therefore, commenced on 27.12.2019 and expired on 25.03.2020. The Bank's computation, which treats 26.12.2019 as the first day, consequently cannot be sustained.

126. The aforesaid conclusion receives further support from the Bank's own contemporaneous letter dated 21.03.2020, wherein the closure date of the Ad Hoc Facility was recorded as 26.03.2020. This record, made prior to the present dispute, is inconsistent with the subsequently pleaded date of 24.03.2020.

127. The cumulative effect of the statutory rule of computation, the Bank's contemporaneous record and the position recorded before the Adjudicating Authority leaves little scope for sustaining 24.03.2020 as the relevant date. Upon expiry of the 90-day period on 25.03.2020, the facility could have become overdue only on 26.03.2020. The said date falls squarely within the period protected by Section 10A. The consequence is not that the underlying debt stood extinguished or that no default occurred, but that such default, having arisen during the protected period, could not be relied upon for initiation of CIRP under Section 7 of the Code by the banks for this Ad Hoc Cash Credit Facilities.

128. <u>ISSUE 3</u>: Other Ancillary issues related to above two issues pleading in the appeal.

129. The next question is as to the evidentiary weight to be attached to the amended dates of default pleaded by the Bank. There is no dispute that, as a general proposition, a Section 7 application may be amended and additional documents may be placed on record before the final order.

Section 7(3)– (5) of the Code reads as under: -

> *"Section 7 (3) – <u>The financial creditor shall, along with the application furnish— (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified</u>; (b) the name of the resolution professional proposed to act as an interim resolution professional; and (c) any other information as may be specified by the Board."*

> *"Section 7 (4)- The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)*
> *[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]"*

> *"Section 7 (5)(b)- (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application: Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority."*
>
> *(Emphasis Supplied)*

Here we note that Section 7(3) of the Code requires a financial creditor, while making an application for initiation of the CIRP, to furnish, inter alia, the record of default recorded with the information utility or such other record or evidence of default as may be specified. The provision, therefore, requires the financial creditor to place before the Adjudicating Authority material evidencing the occurrence of the default relied upon.

Further, under the proviso to Section 7(5)(b) of the Code, where any defect is found in the application, the Adjudicating Authority is required to give the applicant an opportunity to rectify such defect within seven days. The statutory scheme thus contemplates that the application under Section 7 must be supported by the requisite material demonstrating the existence of the default, while also providing a limited opportunity for rectification of defects in the application.

130. We observe that in ***Dena Bank v. C. Shivakumar Reddy***, (2021) 10 SCC 330, the Hon'ble Supreme Court recognised that there is no absolute bar to such amendment and also referred to the opportunity contemplated under the proviso to Section 7(5)(b) of the Code. The order dated 06.05.2024 permitting the amendment is, therefore, not in question merely on the ground that an amendment was sought. The question, however, is different from the mere permissibility of amendment. What requires examination is the evidentiary weight of a substituted date which replaces the specific date of 29.11.2020 pleaded twice earlier, namely, in the original Form-1 as well as in the Information Utility/NeSL record referred to in the material on record. Significantly, the amended dates were introduced only after the Corporate Debtor specifically raised the Section 10A bar in its reply dated 29.08.2023. The subsequent dates also stand in contrast with the Bank's intervening conduct, particularly the renewal of the Working Capital Consortium

Agreement on 06.11.2020 and the review/renewal of the CC facility on 19.01.2021, both subsequent to the dates of 10.03.2020 and 24.03.2020 now relied upon as the dates of default.

131. The Bank relies upon authorities including ***B. Prashanth Hegde v. State Bank of India,*** *2026 SCC OnLine SC 197 / 2026 INSC 155,* ***Asset Reconstruction Co. (India) Ltd. v. Tulip Star Hotels Ltd., Manmohan Singh (Jain) v. State Bank of India and B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates,*** *(2019) 11 SCC 633,* to contend that the date of default is not sacrosanct and that an insignificant omission or non-adherence to the Form should not defeat an otherwise maintainable Section 7 application. No one can deny the correct ratio of these judgement of Hon'ble Supreme Court.

132. However, the principle relied upon by the Bank has essentially arisen in the context of determining limitation, where an imprecise date may lead to computation of the applicable limitation period. In ***B. Prashanth Hegde (Supra),*** the issue concerned acknowledgment of debt for limitation purposes and an unadjudicated counter claim, and not the operation of the permanent statutory bar under Section 10A of the code.

133. At this stage, we reproduce section 10A which reads as under:-

> *"**Section 10A: Suspension of initiation of corporate insolvency resolution process - 10A.** 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[2] in this behalf:*
>
> *Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*
>
> *Explanation.* – For *the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.*"
>
> *(Emphasis Supplied)*

134. We note that Section 10A contains a non-obstante bar against filing an application under Sections 7, 9 or 10 in respect of a default arising on or after 25.03.2020, during the prescribed period extended up to 24.03.2021. The proviso makes the bar permanent by providing that "no application shall ever be filed" for initiation of CIRP in respect of such default. The Explanation clarifies that Section 10A does not apply to a default committed before 25.03.2020. Accordingly, determination of the precise date of default assumes decisive significance, as a default falling within the protected period attracts a permanent statutory bar.

135. The aforesaid limitation jurisprudence cannot be mechanically applied to Section 10A. We note that Section 10A contains a non-obstante and permanent bar, providing that "no application shall ever be filed" in respect of a default arising during the protected period. The consequence of an incorrect date is, therefore, fundamentally different from a mere re-computation of limitation. The question consequently arises whether the same degree of flexibility applicable to the pleading of a default date in limitation cases can extend to a case where the precise date determines the very maintainability of the proceedings under Section 10A. The facts, as noted earlier, do not support the case of the bank on this issue.

136. The further question is whether the admission of the Section 7 application can be sustained by reference to facts or events which were not pleaded as the date of default in the amended Form-1. The Bank contends that the date of default is to be ascertained from the entire record and relies upon ***Asset Reconstruction Co. (India) Ltd. v. Tulip Star Hotels Ltd., Koncentric Investments Ltd. v. Standard Chartered Bank***, *Comp. App. (Ins) No. 911 of 2021, and* ***Vijay Kumar Singhania v. Bank of Baroda & Anr.,*** *2023 SCC OnLine NCLAT 2320*. In this regard, reliance is placed by the bank upon the SARFAESI notice dated 29.06.2022, the recall notice dated 02.01.2023 and the subsequent non-repayment of the FITL amount, which was repayable by 31.03.2021.

Reliance is also placed by the bank upon ***Manmohan Singh (Jain) and Laxmi Pat Surana v. Union Bank of India & Anr.,*** *(2021) 8 SCC 481,* to recognise that where the date of default pleaded in Form-1 is silent or imprecise, the Adjudicating Authority may examine the record to ascertain the true date of default relied upon by the financial creditor. However, we find this principle distinct from permitting the creditor to substitute, at a later stage, a materially different and previously unpleaded basis of default and not supported by evidence and facts. In the present case, the amended Form-1 specifically relies upon 10.03.2020 and 24.03.2020. The question, therefore, is whether, if those dates fail the scrutiny required under Section 10A, the application can nevertheless be sustained by relying upon subsequent events such as the SARFAESI notice, recall notice or non-payment of FITL, when those events were not pleaded as the date of default in the amended Form-1 or specifically put to the Corporate Debtor on that basis.

137. We note that, in paragraph 4.6 of the Impugned Order, the Adjudicating Authority has relied upon Laxmi Pat Surana v. Union Bank of India and proceeded on the basis that it is the "date of default", and not the date of NPA, which is material. On this basis, the Adjudicating Authority accepted the amended dates of default pleaded by the Bank, namely, 10.03.2020 and 24.03.2020, which fall outside the period covered by Section 10A of the Code, notwithstanding that the actual NPA date is 29.11.2020, which falls within the Section 10A period.

138. However, we are of the considered view that the aforesaid decision has not been correctly applied by the Adjudicating Authority. Laxmi Pat Surana (supra), as stated in the Impugned Order, does not lay down a general rule permitting the lender to rely upon an earlier date of default in respect of the direct borrower. On the contrary, the said judgment treats the NPA date as ordinarily constituting the date of default and carves out an exception in the context of a corporate guarantor. The said exception was applied for determining an earlier default against the guarantor and was not intended to enable a lender to select an earlier date merely to sustain its claim.

139. In the present case, however, the Adjudicating Authority has relied upon ***Laxmi Pat Surana (supra)*** to accept the Bank's amended dates of 10.03.2020 and 24.03.2020, thereby placing the alleged defaults outside the Section 10A period. Such application of the judgment, in our considered view, is not warranted on the basis of the principle stated therein.

140. We further note that ***Laxmi Pat Surana (supra)*** did not deal with Section 10A of the Code. The said case concerned limitation and guarantor liability, whereas the issue in the present case concerns the applicability of the statutory bar under Section 10A. In this regard***, Ramesh Kymal v. Siemens Gamesa*** is a more relevant precedent concerning Section 10A. However, the Impugned Order does not refer to or consider the said decision.

141. We reiterate that the bank has all the rights to amend the section 7 application including date of default provided this is supported by the facts. As noted earlier, the sequence of events and chronology of dates do not help contentions of the bank on this account as we have found in earlier detailed discussion that the claimed dated of default in amended petition by the bank with reference to both Cash Credit Facilities and Ad Hoc Cash Credit Facilities were not correct and correct default dates falls squarely in 10A period.

142. The other issue raised by the bank is that the appeal arising from the decision of this Appellate Tribunal in JC Flowers (Supra) was disposed by the Hon'ble Supreme Court by a non-speaking order and, therefore, no merger or declaration of law under Article 141 of the Constitution can be said to have arisen. Reliance is placed upon ***Kunhayammed v. State of Kerala***, *(2000) 6 SCC 359 and* ***Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.,*** *(2019) 4 SCC 376,* as also their discussion ***in Experion Developers (P) Ltd. v. Himanshu Dewan***, *2023 SCC OnLine SC 1029*.

143. The legal position, however, requires a distinction to be maintained between the precedential effect of the Hon'ble Supreme Court's order and the independent significance of the judgment rendered by the Appellate Tribunal, confirmed by the Hon'ble Supreme Court in statutory appeal under Section 62 of the code in contrast to SLP provisions. Even assuming that the Hon'ble Supreme Court's dismissal was non-speaking and did not attract merger or Article 141, as argued by the bank, the appellate Tribunal judgment does not, by that circumstance alone, cease to be without legal force. Where the decision is rendered on materially similar facts, it would ordinarily require consideration by this Appellate Tribunal, either by following the principle laid down therein or by distinguishing it on the facts or law.

144. The material question, therefore, is whether the reasoning adopted in JC Flowers (Supra) is distinguishable on the basis of the Bank's contention that Para 2 and Para 3 of the RBI circulars operate differently, the former dealing with moratorium in respect of term loans and the latter with deferment in respect of Cash Credit /Ad-hoc Cash Credit facilities. It is this substantive distinction, rather than the mere doctrine of merger, which falls for examination in determining the applicability of JC Flowers to the present case. The aspect of applicability of Para 2 v/s Para 3 of RBI Circular dated 27.03.2020 and 23.05.2020, has already been examined in great details earlier, which further fortify the cause of the Appellant.

145. In view of above detailed discussion, we find merit in the Appeal. The Appeal succeeds and the Impugned Order is set aside. I.A., if any, are closed. No order as to cost. However, we also hold that the bank may avail all other remedies which may be available in accordance with law including proceedings under the IBC with regard to fresh default if any.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Sim
Chinmayee (LRA)