



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP (IB) No. 1259/MB/2022**

**AND**

**I.A. NO. 924 OF 2023.**

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

*In the matter of:*

**Axis Finance Limited**, having its Registered Office at: - Axis House, Ground Floor, Wadia International Centre, Worli, Mumbai-400 025.

**..... Applicant/ Financial  
Creditor**

**Versus**

**Primat Infrapower & Multiventures**

**Private Limited**, Having its Registered Office at: 18<sup>th</sup> Floor, A Wing, Marathon Futurex, N.M. Joshi Marg, Lower Parel, Mumbai- 400 013.

**..... Corporate Debtor**

**Order Delivered on :- 15.07.2024.**

***Coram:***

**Mr. Anil Raj Chellan  
Member (Technical)**

**Mr. Kuldip Kumar Kareer  
Member (Judicial)**



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

*Appearances (Hearing in Physical Mode):*

For the Financial Creditor: Adv. Nausher Kohli a/w Mr. Yash Dhruva and  
Ms. Niyati Merchant i/b. MDP & Partners.

For the Corporate Debtor: Adv. Harsh L. Behany a/w Ms. Prachi Sanghvi.

**ORDER**

*Per: - Kuldip Kumar Kareer, Member (Judicial)*

1. The above-captioned petition is an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 filed by **Axis Finance Limited** (hereinafter referred to as "Financial Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) of M/s. **Primat Infrapower & Multiventures Private Limited** (hereinafter referred to as "Corporate Debtor") for resolution of financial debt in default by the Corporate Debtor to the tune of **INR 87,50,53,697.00/-** (Rupees Eighty-Seven Crores, Fifty Lakhs, Fifty-Three Thousand, Six Hundred and Ninety-Seven only). The date of default, as stated in the application, is 25<sup>th</sup> January, 2019.
2. I.A. No. 924/2023 is an application preferred by the Corporate Debtor objecting the maintainability of the above-captioned company petition and simultaneously praying for its dismissal.



**Facts of the Case as pleaded by the Financial Creditor in its Application  
u/s 7 are briefly stated hereunder:**

3. The Financial Creditor sanctioned a loan of Rs.100,00,00,000/- (Rupees One Hundred Crores only) to the Corporate Debtor vide Sanction Letter dated 21<sup>st</sup> June, 2018 on the terms and conditions set out therein. The Financial Creditor granted the aforesaid term loan of Rs.100,00,00,000/- (Rupees One Hundred Crores only) to the Corporate Debtor by way of entering into a Facility Agreement with the Corporate Debtor on 26<sup>th</sup> June, 2018. The tenor of the loan was 3 years from the date of initial disbursement and the rate of interest charged at 10.35% p.a. payable at quarterly rests.
4. The said term loan was secured by pledge of certain securities in favour of the Financial Creditor vide Pledge Agreement dated 26<sup>th</sup> June, 2018 executed by Pledgor I i.e. Direct Media Distribution Ventures Private Limited ("Direct Media"); Pledgor 2 i.e. the Corporate Debtor; and Pledgor 3 i.e. Essel Corporate LLP ("Essel Corp").
5. By letter dated 12.05.2020 addressed by the Financial Creditor to the Corporate Debtor, Essel Corp and Direct Media, the Financial Creditor called upon the noticees to make payment to regularize the interest overdues of Rs. 2.55 crore in the loan account of the Corporate Debtor.
6. By way of letter dated 06.08.2020 addressed by Advocates for the Financial Creditor to the Corporate Debtor, Essel Corp and Direct Media, the Financial Creditor called upon the noticees to make payment of the outstanding amount of Rs.86,95,19,829/- due by the Corporate Debtor as on the date of issuance of the said letter along with further interest up to the date of actual payment as per contractual terms. The aforesaid letter was replied to by the Corporate Debtor



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

through its advocates by letter dated 28<sup>th</sup> August, 2020 making certain frivolous and vague responses. The Reply of the Corporate Debtor by letter dated 28.08.2020 was contested by the Financial Creditor by addressing a letter dated September 18, 2020 to the Corporate Debtor repeating the contents of the letter dated August 06, 2020 and *inter-alia* called upon the Corporate Debtor to comply with the requisitions in the letter dated August 06, 2020.

7. By letter dated September 10, 2020 addressed by the advocates for the Financial Creditor to the Corporate Debtor, Essel Corp and Direct Media, the Financial Creditor *inter-alia* called upon the Corporate Debtor, in accordance with the provisions of clause 6.1 of the Facility Agreement, to make payment of the outstanding amount of Rs. 86,94,32,637.86/- due by the Corporate Debtor as on the date of issuance of the said letter along with further interest up to the date of actual payment as per contractual terms.
8. By letter dated October 21, 2021 addressed by the Financial Creditor to Corporate Debtor and other noticees, the Financial Creditor *inter alia* called upon the Corporate Debtor to provide cash margin of Rs. 67.8 crores or top up by way of pledge of additional acceptable securities to Financial Creditor.
9. However, since the default has not been made good, the Applicant herein was constrained to file the present petition against the Corporate Debtor.
10. The Financial Creditor has filed an Additional Affidavit dated 31<sup>st</sup> July, 2023 to bring on record certain additional facts as also the amended NeSL Report.



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

11. **Reply on Behalf of the Corporate Debtor:** The Corporate Debtor has chosen not to file the reply but instead the Corporate Debtor has contested the above-captioned petition by filing I.A. No. 924/2023.
12. **I.A. No. 924/2023 filed by the Corporate Debtor:** The contentions and objections placed on record by the Corporate Debtor vide I.A. No. 924 of 2023 are briefly capitulated below:
- i. The Applicant/Financial Creditor has failed to serve a copy of the petition on IBBI prior to filing of this petition which is a mandatory requirement under the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Thus, as the present petition does not comply with the mandatory requirements under the Code, it is liable to be dismissed at the threshold.
  - ii. The Petitioner has mentioned wrong date of default in the petition i.e. 25<sup>th</sup> January, 2019; whereas the letters annexed by the Financial Creditor itself go on to show that there was no default prior to 12<sup>th</sup> May, 2020. Thus, the Financial Creditor is guilty of suppressio veri and suggestion falsi. The Financial Creditor intentionally provided the wrong default date in Part IV of the petition, while in the record of default submitted to the Information Utility, the Financial Creditor stated that the date of default was September 17, 2020. The Corporate Debtor submits that there is nothing on record to show that the default has been committed by it in 2019.
  - iii. The Corporate Debtor states that the date of default recorded with the information utility is September 17, 2020 and the date of NPA is June 30, 2020. Even if either of the above dates are considered as the date of default, it is clear that the present petition is barred by Section 10-A of the Code.



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

- iv. The Financial Creditor has sought to initiate proceedings u/s 7 of the Code as a debt collection and recovery mechanism against the Corporate Debtor, which is a solvent company and a going concern, which is completely contrary to the object and purpose of the IBC.

13. **Reply to I.A. No. 924/2023:** The Reply of the Financial Creditor to the above-captioned IA is briefly summarised and recapitulated below:
- a. The Financial Creditor submits that there is no specific timeline in the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for serving a copy of the petition on the Board. In any case, the alleged defect in the petition is a rectifiable defect and cannot be used as a ground to challenge the maintainability of the present petition.
  - b. As regards the objections to the petition on the ground of section 10A of the Code, the Financial Creditor in this regard humbly submits that the bar u/s 10-A will not apply, as in the facts of the present case, the Corporate Debtor had completely defaulted in making interest payments due for the quarters ending on September 30, 2019 and December 31, 2019. The default amount from October 01, 2019 to December 31, 2019, including default interest, was Rs 2,60,87,671/- (Rupees Two Crore Sixty Lac Eighty-Seven Thousand Six Hundred Seventy-One only). From December 31, 2019 i.e. from January 01, 2020 to March 31, 2020, the default amount, including default interest, was 2,58,04,109/- (Rupees Two Crore Fifty-Eight Lacs Four Thousand One Hundred Nine only). Till date, the default has not been cured. Further, the erroneous date of default mentioned in Part IV of the Application was out of inadvertence and the correct date of



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

default under the present petition is March 31, 2021. The Financial Creditor submits that these facts have been pleaded in the additional affidavit dated 31.07.2023 filed by it.

- c. The RBI Guidelines were lifted on March 23, 2021 and accounts which were 90 days or more past due could have been declared as an NPA. Accordingly, the account of the Corporate Debtor ought to have been declared as an NPA on March 31, 2021. As a result, the Financial Creditor has amended the NeSL Report to reflect the date of default the date of the NPA. The Financial Creditor submits that these facts have been pleaded in the additional affidavit dated 31.07.2023 filed by it.
- d. Pertinently, even after the 10A period i.e. March 25, 2021, the Corporate Debtor failed to make payment of the amounts due and payable to the Financial Creditor. In accordance with the repayment schedule of the Facility Agreement, the entire Loan was to be repaid as a bullet repayment at the end of 3 (three) years from the date of initial disbursement i.e. June 29, 2018. Hence, the entire Loan was to be repaid by June 29, 2021. The Corporate Debtor has defaulted in the repayment of the Loan as per the repayment schedule detailed in the Facility Agreement. The Financial Creditor submits that these facts have been pleaded in the additional affidavit dated 31.07.2023 filed by it.

**Submissions of the Financial Creditor (in brief):**

- 14. Counsel for the Petitioner states that On June 29, 2021, the entire Loan was to be repaid [i.e. 3 years from the date of disbursement of the Loan viz. June 28, 2018], as per the repayment schedule mentioned in the



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

Facility Agreement. Pertinently, the due date for payment of the Loan i.e. June 29 2021 was after the 10A Period. The Corporate Debtor defaulted in the repayment of the Loan under the terms of the Loan Agreement.

15. Counsel for the Financial Creditor submits that the Corporate Debtor has defaulted in making payment of the interest instalments for the quarter ending September 30, 2019 and December 31, 2019. Hence, the Corporate Debtor committed defaults in payment prior to the 10A Period. Counsel for the Financial Creditor further submits that the Corporate Debtor has defaulted in making payment of principal amount of the Loan on June 29, 2021, as per the repayment schedule in the Loan Agreement. It is further reiterated and submitted that the Corporate Debtor has defaulted in making payment of the interest instalments for the quarters ending June 30, 2021; September 30, 2021; December 31, 2021; March 31, 2022 and June 30, 2022. Hence, the Corporate Debtor has committed defaults in payment after the 10A Period. In view of the submissions hereinabove, it is submitted that substantial defaults have taken place outside the 10A Period i.e. both before and after the 10A Period. It is settled law when defaults take place outside the 10A Period, the Petition cannot be barred by Section 10A of the IBC. To buttress the aforesaid proposition of law, the learned Counsel for the Financial Creditor has placed reliance upon the following rulings:

- a. Vishal Agarwal vs. ICICI Prudential Real Estate AIF-1 & Anr., Company Appeal (AT) (Insolvency) No. 1016 of 2022, the Hon'ble NCLAT, Principal Bench, New Delhi.





IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

- b. NuFuture Digital (India) Limited vs. Axis Trustee Services Ltd.  
[2023 SCC OnLine NCLAT 242]
- c. Nitin Chandrakant Desai vs. Edelweiss Asset Reconstruction Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 1022 of 2023, the Hon'ble NCLAT, Principal Bench, New Delhi.

**Submissions of the Corporate Debtor (in brief):**

16. Counsel for the Corporate Debtor submits that the present petition is barred by Section 10-A of the Code and that the above-captioned petition has been filed by the Financial Creditor on the basis of the wrong date of default. Counsel for the Corporate Debtor submits that the date of default mentioned in the captioned Petition i.e., 25th January 2019, is contrary to the date of default recorded in the NeSL Report/ Information Utility i.e. 17<sup>th</sup> September, 2020. Further, the Counsel for the Corporate Debtor states that the loan account of the Corporate Debtor was classified as NPA on 30<sup>th</sup> June, 2020. In the present case, the date of default recorded with the Information Utility is 17<sup>th</sup> September 2020, which is within the 10A period.
17. Learned Counsel for the Corporate Debtor contends that in the matter of Comfort Fincap Limited vs. Seven Indian Heads Infrabuild Private Limited (I.A. 2804 of 2022 in Company Petition No. 825 of 2022) (Para 4 to 9), the date of default as mentioned in the said petition was 23rd July 2020. As per the record of default as issued by NeSL, the date of default was 23rd July 2020, which was in consonance with the said petition. Thereafter, the petitioner therein attempted to change the date of default to 11th April 2021, in order to circumvent the bar provided under Section 10A of IBC. The Hon'ble NCLT-III, Mumbai, observed



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

that the amendments of the documents make it very clear that the petitioner was trying to change the whole cause of action after the corporate debtor had pointed out that the said petition was hit by Section 10A of IBC. The Hon'ble NCLT-III, Mumbai, further observed that it is a cardinal principal of law that the amendment of pleadings shall be allowed by Courts and Tribunals liberally. At the same time, it is also settled proposition of law that an amendment of pleadings cannot be allowed at a belated stage if the proposed amendment totally changes the cause of action and the whole case of petitioner. The Hon'ble NCLT-III, Mumbai, observed that the amendment of the pleadings is nothing but an abuse and misuse of the process of the Tribunal and such attempt should and ought not to be allowed. In the present case, the Financial Creditor is trying to change the whole cause of action, by introducing new documents with new theories and stories and that too after pointing out by the Corporate Debtor that the date of default mentioned in the captioned Petition is hit by Section 10A which shall not be legally permissible.

18. In the matter of M/s. Asset Reconstruction Company (India) Limited vs. Mis. Manyata Developers Private Limited (Company Petition No. 125 I B Bi 2022) (@Para 25, 26, 31, 34, 35 (iii), (vi)), the Hon'ble Tribunal, Bengaluru, has observed that the Applicant therein cannot be allowed to change the Date of Default. It is relevant to mention that another recent decision of the Hon'ble NCLAT, Principal Bench, New Delhi, in the case Ramdas Dutta vs. IDBI Bank Limited & Anr. dated 26th April 2023, categorically observed that the Date of Default cannot be changed.



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II**

**CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023**

19. In the present case, the Date of NPA mentioned in the captioned Petition is 30th June 2020 (@P/9 of the captioned Petition). The Date of default recorded in the Information Utility is 17th September 2020 (Exhibit Q / @ P/134 of the captioned Petition). Both the Date of Default and the Date of NP A clearly falls within the excluded period under the provisions of Section 10A of the Code. However, the Financial Creditor had sought to file Additional Affidavit to the captioned Petition and Affidavit in Reply to the Interlocutory Application, wherein it had stated that the date of default was inadvertently pleaded as 25th January 2019 in the captioned Petition. Accordingly, the Financial Creditor had amended the NeSL Report /Information Utility. The amended date of default recorded as 31st March 2021. The Financial Creditor is trying to change the Date of Default that too after it was pointed out by the Corporate Debtor that the date of default mentioned in the captioned Petition is hit by Section 10A. By concealing the actual date of default, the Financial Creditor has attempted to circumvent the provisions of Section 10A of the Code. Therefore, it is clear that the Financial Creditor has arrived at the said pleaded date of default i.e., 25th January 2019, only to overcome the bar provided under Section 10A of Code.
20. The Corporate Debtor states that no leave was granted to the Financial Creditor to file any Additional Affidavit. In complete contravention of the Orders passed by this Hon'ble Tribunal and in order to change their cause of action, under the cover of their email dated 1st August 2023, the Financial Creditor had served upon the Corporate Debtor their Affidavit in Reply dated 31st July 2023 and their Additional Affidavit dated 31st July 2023. Without prejudice to the aforesaid and in any



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

event the contents of the Additional Affidavit have to be discarded in light of the judgment of Comfort Fincap Limited vs. Seven Indian Heads Infrabuild Private Limited (I.A. No. 2804 of 2022 in Company Petition No. 825 of 2022).

**ANALYSIS AND FINDINGS**

21. We have heard the counsel for the parties and gone through the records.
22. The period prohibited u/s 10-A of the Code is from 25.03.2020 to 24.03.2021. If the default has been committed by the Corporate Debtor during the aforementioned prohibited period, no application shall ever be filed for initiation of CIRP of a corporate debtor in respect of such default. However, it is equally well settled position in law that if the default is committed by the Corporate Debtor before or after the prohibited period, then such applications are not barred by Section 10-A of the Code.
23. The Loan Agreement dated 26<sup>th</sup> June, 2018 executed between the Financial Creditor and the Corporate Debtor, which is annexed Exhibit 'E' to the petition, read with the Loan Sanction Letter at Exhibit 'D' to the petition, proves the existence of financial debt. As per the terms and conditions of the loan documents referred-to-above, the loan against pledge of securities availed by the Corporate Debtor from the Financial Creditor was to be repaid at the end of 36 months from the date of first drawdown date and interest @ 10.35% p.a. was payable quarterly. According to Clause 2.7 of Article II of the Loan Agreement, the loan shall be disbursed, in one or more tranche and after completion of pre-disbursement conditions as specified in Section 5.2 of the loan agreement, on or before June 30, 2018 i.e. the first drawdown date.



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

Thus, the principal loan facility of Rs. 100 crores were to be repaid on June 29, 2021. However, it is not disputed by the Corporate Debtor that the principal loan of Rs. 100 crores was not repaid on its maturity on June 29, 2021. Hence, the date of default is June 29 2021, which does not fall under the period prohibited by Section 10-A of the Code. Further, since the present petition has been filed on 26.09.2022, which is within three years from the date of default i.e. 29.06.2021 when the right to file the petition accrued, we hold that the present petition is filed within the period of limitation prescribed under Article 137 of the Schedule to the Limitation Act, 1963.

24. We have perused the Statement of Loan Account from 01<sup>st</sup> April, 2020 to 30<sup>th</sup> June, 2022 (annexed at Exhibit 'R1' to the petition) read with Certificate under the Bankers' Books Evidence Act, 1891. The Notice dated 06<sup>th</sup> August 2020 issued by the Financial Creditor to the Corporate Debtor states that till December 31, 2018, the Corporate Debtor was regular in paying quarterly interest instalments. Thereafter, for the quarters ending on 31.03.2019 and 30.06.2019, there was a delay in making payments of interest and for the quarters ending on 30.09.2019 and 31.12.2019, the Corporate Debtor completely defaulted in interest repayments. As a result, some of the pledged securities were sold to recover interest. This fact is corroborated by the loan account statement which shows that recoveries have been made by the Financial Creditor through sale of pledged securities, the proceeds of which have been adjusted/credited to the loan account of the Corporate Debtor maintained by the Financial Creditor. Further, it is evident from the loan account statement that overdue interest of INR 55,82,182.85/- for the quarter ending on 31<sup>st</sup> March, 2022 and INR



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II**

**CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023**

62,29,715.74/- for the quarter ending on 30<sup>th</sup> June, 2022 have been charged by the Financial Creditor which have also remained unpaid. As per the Statement of Loan Account referred-to-above, as on 30.06.2022, the loan amount of INR 61,75,92,977.39/- was outstanding towards the principal and the outstanding interest on loan was INR 25,98,72,524.70/- In view of the above, we are satisfied that the default in payment of quarterly interest payable by the Corporate Debtor was committed prior to Section 10-A period, which has continued during and even after the period prohibited by Section 10-A of the Code. Even otherwise, on expiration of the tenor of the loan on 29.06.2021, the entire principal loan amount, which became due and payable, was defaulted by the Corporate Debtor. Hence, we are satisfied that the present petition is not barred by Section 10-A of the Code.

25. Counsel for the Corporate Debtor has argued that the date of default pleaded in Part-IV of the application u/s 7 is 25.01.2019. The date of NPA is 30.06.2020, as pleaded in Part IV and the date of default recorded in the report of NeSL is 17.09.2020. In view of the facts stated above, the learned Counsel for the Corporate Debtor contends that since the default has been committed in the period covered by Section 10-A of the Code, the present petition cannot be entertained. However, we do not agree with the aforesaid contention. Mere insertion of any date of default in section 7 application or in the information utility, does not make that date of default valid and binding. It is always open to the Adjudicating Authority to ascertain as to when the default in repayment of debt by corporate debtor has taken place from the documents, information and material available on record. Hence, the





IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

contention of the Corporate Debtor that the Adjudicating Authority should go by the date of default as mentioned in the application and the information utility report, is not correct and is liable to be rejected.

26. The reliance placed by the learned Counsel for the Corporate Debtor upon the ruling of Hon'ble NCLAT in *M.K. Dhir & Ors. v/s. Punjab National Bank* [vide Judgment dated 18.01.2022 in CA(AT)(Ins.) No. 453/2021] is also misplaced, as the said case is factually distinguishable. In the aforesaid case, the classification of loan account as NPA was set aside by the Ld. Presiding Officer of the Debts Recovery Tribunal and therefore, the Appellants therein had contended that the proceedings under the Code were without merit and beyond jurisdiction. However, the Hon'ble NCLAT held that there was no finding by the DRT that the default had not been committed by the corporate debtor and/or no amount of debt was due and payable, and the DRT had merely set-aside the classification of loan account as NPA only for the purpose of SARFAESI Act, which was impugned in appeal before the Hon'ble DRAT. The Hon'ble NCLAT further held it is a settled law that default is committed first and second stage comes as NPA; and therefore, the impugned order of the Adjudicating Authority, which was based on the record of default available in the Information Utility, was upheld by the Hon'ble NCLAT. In the present case, the date of NPA i.e., 30<sup>th</sup> June, 2020 cannot be strictly construed as the date of default since the default committed in respect of the quarterly interest prior to the date of NPA was made good by selling of shares; whereas, the interest due after the 10-A period and the principal loan due on expiration of tenor, both, continue to remain in default, which has given a fresh cause of action to the Petitioner to initiate CIRP



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II**

**CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023**

of the Corporate Debtor and the same can be taken into consideration for ascertaining the exact date of default.

27. Counsel for the Corporate Debtor has contended that since the entire loan with interest was recalled by the Financial Creditor vide Notice dated 06<sup>th</sup> August, 2020 and Notice dated 18<sup>th</sup> September, 2020, the present petition is barred by Section 10-A of the Code. Even this contention raised by the Ld. Counsel for the Corporate Debtor does not appear to be correct. We have perused the Notice dated 06.08.2020 at Exhibit 'K' and Notice dated 18.09.2020 at Exhibit 'N' to the petition. In none of the above-referred notices, the loan has been expressly recalled. It appears that by way of these notices, the Corporate Debtor was simply apprised of the continuing default on its part and was given an opportunity to make good its default. Hence, the same cannot be construed as a loan recall notices, as the loan was neither expressly recalled nor any action was initiated prior to the completion of period of 3 years when the principal became actually due as per the terms and conditions of the loan agreement.

28. In view of the foregoing findings and discussions, we hold that the debt and default have been satisfactorily established from the records. Further, we hold that the petition is within limitation and it is not barred by Section 10-A of the Code. We are also satisfied that a default of well over Rs. 1 crore has been committed by the Corporate Debtor, thereby satisfying the minimum threshold prescribed u/s 4 of the Code. We are thus inclined to admit this petition and it is ordered accordingly in the following terms:





IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

**ORDER**

- (a) The petition bearing **CP(IB)-1259/MB/2022** filed by **AXIS FINANCE LIMITED**, the Financial Creditor, under Section 7 of the IBC, 2016 read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor M/s. **PRIMAT INFRAPOWER AND MULTIVENTURES PRIVATE LIMITED** [CIN: U74110MH1999PTC285503] is hereby **admitted**;
- (b) **Mr. Devarajan Raman**, an Insolvency Professional having registration No. **IBBI/IPA-002/IP-N00323/2017-2018/10928**, (email: [Devarajan.raman@gmail.com](mailto:Devarajan.raman@gmail.com)), having his office at 12, ICT SQ, R.A. Kidwai Road, Matunga, Mumbai-400019; **is hereby appointed as Interim Resolution Professional** to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (c) The Financial Creditor shall deposit a sum of **₹ 5,00,000/-** (Rupees Five Lakhs only) with the IRP towards the initial **CIRP costs** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (d) There shall be a moratorium under Section 14 of the IBC, in regard to the following:
- (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (e) Notwithstanding the above, during the period of moratorium-
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (f) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT-II

CP(IB) No. 1259/MB/MAH/2022  
& I.A. No. 924 OF 2023

- (g) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (h) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- (k) **I.A. No. 924 of 2023** is hereby **rejected**.

Sd/-

ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)