NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 136/2023
(IA No. 459/2023)

In the matter of:

UMA MAHESWARI
Suspended Director and Shareholder of
Sharon Solutions Limited
Registered Office Address:
Ground Floor, Jeena House,
MKN Road, Alandur,
Chennai – 600016. **… APPELLANT**

Vs

M/s. UCO BANK
Registered Office Address: 10, BTM Sarani,
Kolkata, West Bengal – 700 001.
Branch Office Address:
(International Banking Branch) at 3rd Floor,
No.328, Thambu Chetty Street,
Chennai – 600 035. **… RESPONDENT NO.1**

Mr. RAMAKRISNAN SADASIVAN, IRP
Address: Old No.22, New No.28,
Menod Street, Purasawakkam,
Chennai – 600 007. **… RESPONDENT NO.2**

Present :

For Appellant	:	Mr. Pawan Jhabakh & Mr. Jerin Asher Sojan, Advocates
For Respondents	:	Mr. T. Ravichandran, Advocate for R1 Mr. Ramakrishnan Sadasivan, Advocate for R2/RP

J U D G M E N T
(Hybrid Mode)

[Per: Jatindranath Swain, Member (Technical)]

1. The instant appeal has been filed by the Appellant, Ms. Uma Maheshwari, the suspended director and shareholder of M/s. Sharon Solutions Limited, challenging the order passed by Ld. NCLT dated 18.04.2023 in CP(IB)/86/CHE/2021. By virtue of the impugned order, the Corporate Debtor, M/s. Sharon Solutions Limited (hereinafter referred to as "CD") was directed to be admitted into Corporate Insolvency Resolution Process (CIRP).

Facts of the Case

2. Brief facts of the case are that, on 04.03.2013 the CD had executed a term loan agreement with 1st Respondent UCO bank (Financial Creditor), along with such other documents viz. Packing Credit Advance agreement, Demand Promissory Note, Letter of Continuity (Packing Credit), Waiver of Presentment, Hypothecation Agreement, Agreement for extension for charge by way of hypothecation and Permanent / Omnibus counter guarantee, in furtherance of the term loan agreement. Besides above, the CD had also executed a working capital consortium agreement with the 1st Respondent, i.e., UCO Bank, Canara Bank, and the Federal Bank, along with other necessary documents on 28.09.2013. On 30.06.2014, the 1st Respondent Bank approved a restructuring package for the CD,

wherein it renewed and restructured the facilities granted to the CD, for which the Term loan agreement and various ancillary documents were executed by the CD.

3. On 31.12.2014 the account of the CD was classified as Non- Performing Asset (NPA). On 09.02.2016, notice was issued by the 1st Respondent under SARFAESI Act, calling upon the CD to repay the amount due and payable. The 1st Respondent Bank continued its proceedings before the Debt Recovery Tribunal (DRT) in the shape of OA/368/2016 and upon decision a debt recovery certificate, being DRC No.133/2018 dated 06.03.2018 was issued in favour of 1st Respondent Bank.

4. Consequent to this, the CD submitted a proposal for a One-Time Settlement (OTS) of all dues based on the terms that were agreed by both parties and on 17.06.2020, the said proposal was approved by the 1st Respondent. However, on 13.10.2020, the 1st Respondent had sent a communication to the CD stating that the OTS scheme approved on 17.06.2020 has failed and subsequently on 02.04.2021, it filed a Company Petition, being CP(IB)/86/CHE/2021, under Section 7 of I & B Code, 2016 (hereinafter referred to as the Code) against the CD, praying for initiation of CIRP against the CD. Ld. NCLT, after hearing both sides and perusing the documents presented, passed the impugned order on 18.04.2023 allowing the said application and admitting the CD into CIRP. The said order is under challenge by the Appellant in the instant Company Appeal.

Appellant's Submissions

5. The Appellant has submitted that in the petition CP(IB)/86/2021, thus filed under Section 7 of the Code by the 1st Respondent on 02.04.2021 before Ld. NCLT, seeking the initiation of CIRP against the CD for repayment of Rs.53.19 crore, the date of default had been mentioned as 01.11.2020. The Appellant contends that the aforesaid date of default would fall within the period during which Section 10A of the Code will operate, i.e., from 25.03.2020 to 25.03.2021, that as per the provisions of Section 10A, no application under Section 7, 9 & 10 of the Code can be filed and therefore, the said Section 7 the application is not maintainable, and it ought to have been dismissed at the threshold by Ld. NCLT.

6. He has contended that though date of default cannot be changed, despite of his pleading, the Ld. NCLT allowed the 1st Respondent, the Financial Creditor (hereinafter referred to as FC) to change the date of default from 01.11.2020 to 06.03.2018, which was corresponding to the date of issue of the recovery certificate by the Ld. DRT and accordingly facilitated the FC to avoid the bar of Section 10A of the Code. He has cited the judgements of NCLAT, in the matter of ***Ramdas Dutta v. IDBI Bank & Anr.,*** **CA (AT) (Ins) No.1285/2022**, and the judgement of Hon'ble Supreme Court of India in the case of ***Ramesh Kymal v. Siemens Gamesa Renewable Power Private Limited*** **[(2021) 3 SCC 224]**, to contend that the date of default cannot be changed and that a creditor cannot retrospectively reschedule the date of the default to bypass the operation of

Section 10A of the Code. However, in the instant case, the same has been allowed to be done even when in reality, the default in payment of the instalments under OTS fell right within the period contemplated under Section 10A of the Code. Accordingly, he submits that the plea of the Respondent that the date of issue of recovery certificate by Ld. DRT is the actual and determined date of default for the purpose of Section 7 application is untenable in law. He has also stated that the reliance of the Respondent on the judgement of ***Asset Reconstruction Company (India) Limited v. Bishal Jaiswal*** **[Civil Appeal No. 323 of 2021]** to support his contention that the date of issue of DRC certificate is actually the date of default is not correct because the date of default cannot be altered and modified by the FC as per his convenience, and the said ratio also does not permit the same.

7. Apart from the same, he has submitted that the application seeking initiation of CIRP was full of defects, and did not conform to various provisions of the NCLT Rules 2016, but Ld. NCLT permitted the 1st Respondent to rectify the said defects, which it ought not to have done, and instead should have rejected the application, as defective.

8. He has further submitted that despite his pleading before Ld. NCLT that, the CD was a viable running concern and was close to completing the process of bringing in significant investment, which could have facilitated the CD to settle all the dues to the financial creditors and to enable it to operate the business as usual, Ld. NCLT did not take the same into consideration and went on to pass the

impugned order, admitting the CD into CIRP. He has further submitted that the CD had pending orders from various entities, including banks and BSNL, which should have been sufficient to cover the dues to be paid to the financial creditors, and therefore the CD was in a viable financial position, which Ld. NCLT failed to appreciate. Thus, Ld. NCLT, while passing the impugned order, failed to consider the law as laid down by the Hon'ble Supreme Court, in the matter of ***Vidarbha Industries Power Limited v. Axis Bank***, in ***Civil Appeal No.4633/2021***. He has further stated that since the CD was a going concern, having credible reputation, substantial market presence, loyal customer base, and an enterprise having considerable service value, were the facts which was not appreciated by Ld. NCLT, while passing the impugned order and therefore, the said impugned order should be set aside.

<u>Submission of the Respondent</u>

9. In his reply, the 1st Respondent (FC) has stated that, the Appellant challenged the impugned order on three specific grounds, which are that:

(i) The order is contrary to the provisions of the Code and to the ratios laid down by several judgments of the Hon'ble Supreme Court and NCLAT,

(ii) The impugned order has been passed in contravention of the provision of Section 10A of the Code, and

(iii) It is a non-speaking order, which does not provide the rationale to why the contentions of the Appellant were not considered while passing the impugned order.

10. The Respondent contends that documents submitted by the Respondent and the impugned order could demonstrate that every single ground advanced is not sustainable and the proposition as raised by the Appellant has already been settled by the Hon'ble Supreme Court and as well as by this Appellate Tribunal to the contrary, and therefore, the Appeal should be dismissed.

11. He has stated that contrary to the averment of the Appellant, the date of default will be the one when the account becomes NPA and/or the date on which the recovery certificate by Ld. DRT is granted, and it is only that date, which becomes relevant for fixing the date of default in Section 7 application. He has stated that the loans were granted to the CD on 28.09.2013, loans were restructured on 30.06.2014, the account of CD became NPA on 31.12.2014, the recovery certificate was issued by Ld. DRT on 06.03.2018 and the said debt has been acknowledged in writing by the CD four times between 20.02.2020 and 18.03.2021. Therefore, the date of default would be 06.03.2018 and the application under Section 7, which was filed on 02.04.2021, is well within limitation because it has been filed within 3 years of the date of default and because of the subsequent acknowledgement of the debt by the CD. He has further stated that though, the date of default in the Section 7 application was mentioned

as 01.11.2020, the same was corrected by filing of additional documents, which is permissible as per the principle laid down in the para. 96 of the judgement of Hon'ble Supreme Court dated 01.08.2022, in the matter of ***ARCIL v. Tulipstar Hotels*** where it has been reiterated that additional documents filed have to be taken into account and can be brought on record. He has further stated that as per the principle laid down in para. 85 of the judgement of Hon'ble Supreme Court in the matter of ***Kotak Mahindra Bank Limited v. A. Balakrishnan & Anr.,*** date of issue of Recovery Certificate can be taken as the date of default and therefore Ld. NCLT has not committed any error in accepting the date of issue of the said Recovery Certificate as the date of default.

12. He has further submitted that the suspended management / board of the CD had no intention of reviving the business of CD, which can be seen from the fact that the CD was the subject of winding up proceedings before Hon'ble Madras High Court it is because of the failure to repay the debts and further, even the OTS proposal was not acted upon despite grant of reasonable time which shows the inability of the CD to fulfil its obligations. Further, from a commercial standpoint, the fact that the CD has not been able to revive itself for the last eight years only indicates that, the CD is not viable entity and therefore the ratio laid down by Hon'ble Supreme Court in its judgement dated 12.07.2022 in the matter of ***Vidarbha Industries Power Limited v. Axis Bank*** **[Civil Appeal No. 4633/2021]**, will not apply to this case because in the case of Vidarbha Power, the CD was a

large infrastructural project/service provider and was also a running concern. Further vide its order dated to 22.09.2022, in the review petition "**Re – Vidarbha Industries**" and in a subsequent judgement dated 11.05.2023 in **Civil Appeal No.7121/2022** in the matter of ***M. Suresh Kumar Reddy v. Canara Bank***, Hon'ble Supreme Court has clarified that, the decision in the case of **Vidarbha Industries (*supra*)** was in the setting of the facts of that case and that the said decision cannot be read and understood as taking a view, which is contrary to the view taken in the case of ***M/s. Innoventive Industries Ltd. v. ICICI Bank & Anr.*** **[Civil Appeal Nos. 8337-8338 of 2017]** and ***E.S. Krishnamurthy & Ors. v. M/s Bharath Hi Tech Builders Pvt. Ltd.*** **[Civil Appeal No. 3325 of 2020)]**, and that the view taken in case of **Innoventive Industries** that "*the Adjudicating Authority must limit its inquiry strictly to whether default has occurred and whether the application is complete*", still holds good. Accordingly, he has contended that the plea of the appellant to keep the CD out of CIRP because it is going concern and a viable entity should not be accepted.

13. Ld. Counsel for the Respondent has further stated that, this Appellate Tribunal, in the matter of ***Vishal Agarwal v. ICICI Prudential Real Estate AIF-I*** has held that benefit under Section 10A can be claimed by an Appellant only when there is a clear default during the prohibited period. In the instant case, because the default was much prior to commencement of the Section 10A period and the default continued during the Section 10A period and therefore, it cannot

be argued that the date of default fell within Section 10A period, it has contended that the mere mention of the date of default as 01.11.2020 in Form-I by the Appellant cannot be taken as the final word on the date of default as information to be disclosed in Form-I are procedural requirements and the errors creeping into the said set of information including that of the date of default recorded therein, can be corrected and this technicality ought not to stand in the way of dispensation of justice. He has further stated that procedural defects and irregularities, which are curable, should not be allowed to defeat substantive rights or to cause injustice and in support of his contention, he has cited the judgement of Hon'ble Supreme Court in ***Civil Appeal No. 6701 of 2005*** dated 10.11.2025, in the matter of ***Uday Shankar Triyar V. Ram Kalewar Prasad Singh & Anr.***, where the Hon'ble Supreme Court in para. 17 of said judgement ruled that *"procedural defects and irregularities, which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or to perpetrate injustice, by any oppressive or purity use"*. Going further, he has countered the contention of the Appellant that date of default cannot be changed in accordance with the ratio of **Ramesh Kymal (*supra*)**, by arguing that in the said case, the operational creditor, Mr. Ramesh Kymal, was trying to shift the date of default, to a date prior to 25.03.2020 in order to avoid the bar of Section 10A, and the actual date of default in that case was reckoned to be 30.04.2020 which was mentioned in the demand notice sent by him, and therefore, he was not permitted to change the date of default to

23.03.2020 and that the facts and circumstances in the instant Appeal are totally different because the default had actually occurred much before, on the date of declaration of NPA and on the date of issue of DRC.

14. He has further submitted that Ld. NCLT has taken judicial notice of the date of NPA, date of recovery certificate issued by Ld. DRT, and the continuing acknowledgement of debts by the CD, and accordingly, proceeded to come to the conclusion that there was a debt and default. He has further stated that more importantly the Appellant did not raise the issue before Ld. NCLT, that the application is barred by the provisions of Section 10A and therefore, Ld. NCLT didn't had the occasion to deal with the said issue, which is being attempted to be raised for the first time by the Appellant. He has also contended that contrary to the allegations of the Appellant, the impugned order is a reasoned order because prior to passing of the said order, Ld. NCLT had given multiple opportunities to the CD on his request to settle the issue with the 1st Respondent, it had heard and passed orders on the IAs filed by the Appellant and had recorded the reasons in detail in the impugned order.

15. The interim resolution professional has stated in his status report that the CIRP process had commenced on 18.04.2023 and he had assumed the charge of IRP of the CD on that day itself. Subsequently, he got a public announcement published on 20.04.2023 regarding the commencement of CIRP process and invited claims from the stakeholders of the CD. Pursuant to the said public

announcement, he had also intimated the statutory authorities such as EPFO, ESI, ROC and GST. Further, he had received a total claim of Rs.557.35 crores from the financial creditors consisting of Rs.249.44 crores pertaining to secured financial creditors and Rs.307.90 crores from unsecured financial creditors. He has also constituted the COC and it has been taken on record by Ld. NCLT on 13.06.2023. He had also taken possession of the factory of the CD and the financial records and had scheduled to conduct the first meeting of COC on 18.05.2023. He has further submitted that the CIRP was stayed by this Appellate Tribunal on 17.05.2023 and therefore he cancelled the said meeting and handed over the possession of the CD back to the promoters / directors.

16. A perusal of the impugned order reveals that Ld. NCLT in the said order, has recorded the documents, these have been submitted along with the Section 7 application, and has diligently recorded the date of NPA, the issue of notice under Section 13(2) of the SARFAESI Act, the proceedings before Ld. DRT-II and the issue of Debt Recovery Certificate dated 06.03.2018, the OTS proposal and its ultimate fate and the acknowledgments given by the CD and has come to a conclusion that the Respondent / Financial Creditor had granted credit facilities to the CD, and got several documents executed, that at the request of the CD the debt was restructured, and that, even after restructuring of the credit facilities, the CD did not operate the credit facilities satisfactorily and committed default, that notice under Section 13(2) of SARFAESI Act was issued on 09.02.2015, the

Respondent company and its guarantors, that the Debt Recovery Certificate, being DRC No.133/2018 was issued on 06.03.2018, that it failed to comply with the terms and conditions of the OTS scheme that was sanctioned on 17.06.2020 and persistently continued to default and therefore, the existence of default of an amount above the threshold of Rs. 1.00 crore above the threshold has been proved beyond doubt. Accordingly, Ld. NCLT, by applying the ratio of ***Innoventive Industries v. ICICI Bank Ltd.*** **[(2018) 1 SCC 407]**, passed the impugned order, admitting the Section 7 Application.

Findings

17. It is seen that the Appellant had challenged the impugned order on following grounds:

a) The financial creditor mentioned the date of default as 01.11.2020 in the Section 7 application, which falls right within the Section 10A period and therefore, no application under Section 7 of the IBC could have been initiated and entertained.

b) Subsequently, the financial creditor was allowed to change the date of default to 06.03.2018 to come out of the restrictions imposed by Section 10A, which is not permissible under law as per the ratio of **Ramesh Kymal**.

c) Ld. NCLT overlooked various defects in the Section 7 application and permitted the financial creditor to cure the defects despite her objections, which is again not permissible.

d) Ld. NCLT, while passing the impugned order ought to have taken into consideration the fact that the CD is a going concern having commercial viability, solvency and significant business potential and therefore it should have rejected Section 7 application following the ratio of **Vidarbha Industries Power Limited**.

18. It is to be noted that none of these grounds as dealt with above, except those relating to various defects had been pressed by the Appellant in the proceedings before Ld. NCLT and they were taken note of the same and permitted the financial creditor to rectify the same and to submit additional documents. The same is eminently permissible in view of the well-settled principle that procedure is a handmaid of justice and it should never be made a tool to substantially deny justice or to perpetrate injustice. Ld. Counsel for the Respondent cites the judgement of Hon'ble Supreme Court in the matter of ***Uday Shankar Triyar V. Ram Kalewar Prasad Singh & Anr.*** to stress this point and rightly so. Para. 17 of the said judgement in **Civil Appeal No.6701 of 2005** dated 10.11.2025 is extracted hereunder:

> *'17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application*

or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

(i) *where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;*

(ii) *where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;*

(iii) *where the non-compliance or violation is proved to be deliberate or mischievous;*

(iv) *where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;*

(v) *in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.'*

19. Regarding the averment of the Appellant that the date of default can only be 01.11.2020 because it was mentioned so in the Section 7 application, it can only be said that the said entry is only an error, which under law is rectifiable and was rightly permitted to be rectified by Ld. NCLT. From the records it is obvious and established too that 01.11.2020 is actually the date on which the CD missed

repaying the instalment due on account of OTS settlement. OTS settlement itself is not and cannot be taken as to be rescheduling of loan. The objective of OTS settlement is to permanently close and extinguish the loan account defending of offers and counter offers, where the lender agrees to a compromise haircut, waiving a portion of principal, interest of penalties. Under an OTS, the principal loan does not remain alive. Therefore, missing the timeline for paying OTS amount which is a proceeding in consensus will not lead to a fresh default and upon its culmination, would merely result in restoration of the original position prior to OTS. Accordingly, the date of default will have to be construed from the date of NPA or the date of issue of DRC certificate, following the ratio of ***Kotak Mahindra Bank V. A. Balakrishnan***. Accordingly, date of default will be 06.03.2018 and in that case, the Section 7 application will have to be considered to have been filed well within the limitation period, given that the debt has been acknowledged on four occasions between 20.02.2020 to 18.03.2021 by the CD. Further, the claim of the default falling within Section 10A period will automatically go out of consideration, once 06.03.2018 is established as the date of default.

20. Further the allegation that Ld. NCLT allowed the financial creditor to change the date of default in contravention of established legal position does not inspire confidence. Appellant cites the ratio of **Ramesh Kymal**. As rightly pointed out by the Respondent, in the case of **Ramesh Kymal** the operational

creditor was trying to shift the date of default to a date that fell outside the Section 10A period in order to escape the restrictions of Section 10A. Then, originally the date of default was the date on which demand notice under Section 8 was issued which is the correct legal position. Hence, change of date of default was not allowed. The same cannot be said to apply for the present case where the actual date of default as given in Section 7 application was wrongly given which was later corrected by the financial creditor and the said correction was allowed by Ld. NCLT. The case laws cited by the Appellant will not apply to the instant case as the facts and circumstances are different.

21. Ld. Counsel for the Appellant did not press much on the ground of the CD being a viable and solvent unit during the hearing. However, as the said ground has been preferred in the Appeal memo, we will proceed to answer the same. The Appellant has not put forth any credible and acceptable evidence that it is a solvent, viable unit. On the other hand, its records presented before us show that earlier it had faced a winding up proceedings in the year 2014 because it failed to implement a sanctioned OTS scheme in the year 2020 and it failed to honour its commitment to bring in an investor to end insolvency for which Ld. NCLT had very generously granted certain period of time. Even during the pendency of this appeal, and grant of an interim order, the CD has not been able to find a solution to its insolvency on its own. As noted earlier, the case of Vidarbha Industries Power Limited stands at an altogether different footing where receivables to the

tune of Rs.1730 crores arising out of an arbitration award could not be realised because of litigation. Such a situation does not exist in the instant case except for mere averment that there are huge pending purchase orders which will generate significant revenue for the CD.

22. The Appellant has not disputed the fact that the CD has incurred a debt and it has defaulted in servicing the said debt and the debt in default crosses the threshold of Rs.1 crore as stipulated in Section 4 of the IBC. Its principal defence has been that the default occurred in Section 10A period under the Code, which does not hold much water as we have seen in the preceding paragraphs. Its allegation that the impugned order is a non-reasoned order is also devoid of merit which can be seen from a reading of the said order where Ld. NCLT has meticulously noted the facts and arguments presented by both sides and came to the conclusion that the Section 7 application deserves to be allowed, following the ratio of **Innoventive Industries**.

23. We do not see reason as to how the impugned order can ever be labelled as a 'non-reasoned order'. The plea of the CD being a solvent, viable concern being dragged into CIRP only for recovery purposes and the Section 7 application being defective and hence not maintainable has already been suitably answered by us in negative, in the preceding paragraphs.

24. In view of the discussion and observations as above, we are of the view that the impugned order is correct and need not be interfered with at our hands. Accordingly, the **CA (AT) (CH) (Ins) No. 136/2023** is dismissed. All the pending interlocutory applications will also stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

28 / 09 / 2026

AR/MS/AK