NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 393 of 2025

[Arising out of the Impugned Order dated 13.01.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench in C.P.(IB) No. 787(MB)/C-II/2022]

In the matter of:

Royal Construction
Having its office at:
Rohit Villa, 12 Patel Colony,
Gandhinagar Main Road,
Jamnagar-3610008

…Appellant

Versus

Gannon Dunkerley & Company Limited
Having its Registered office at:
New Excelsior Building, 3rd Floor,
A.K. Nayak Marg, Fort, Mumbai,
Maharashtra-400001

…Respondent

Present:

For Appellant : Mr. Yashwardhan, Mr. S. Sukumaran, Mr. Anand Sukumar and Mr. Pranav Das, Advocates.

For Respondent : Mr. Amir Arsiwala and Mr. Rahul Gupta, Advocates.

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

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 13.01.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in C.P.(IB) No. 787(MB)/C-II/2022. By the impugned order, the Adjudicating

Authority has dismissed the Section 9 application filed by the Operational Creditor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-Operational creditor.

2. Coming to the brief factual matrix, a Section 9 petition was filed by Royal Construction-Operational Creditor seeking initiation of CIRP against Gannon Dunkerley & Company Ltd.-Corporate Debtor for an alleged outstanding debt of ₹10.18 crore arising out of multiple work orders issued by the Corporate Debtor between 2009 and 2018. The Operational Creditor had sent three Section 8 demand notices on 17.08.2020, 15.09.2020 and 27.01.2022.The Corporate Debtor disputed the claims raised by the Operational Creditor on grounds of poor work quality; project delays; abandonment of projects etc. besides raising the ground that the invoices basis which the claims were raised are time-barred. The Adjudicating Authority dismissed the Section 9 petition both on grounds of pre-existing dispute and on grounds that the date of default fell within the Section 10A period rendering the petition non-maintainable. Aggrieved by this impugned order, the Appellant has come up in appeal.

3. Making his submissions, the Ld. Counsel for the Appellant submitted that the Corporate Debtor had issued multiple work orders in favour of the Appellant for various projects including BHEL Sikka Site, Package-O and Package-17 of Madhya Pradesh Major District Roads Upgradation Project. The Appellant had successfully executed and completed the assigned work. However, the Corporate Debtor made only partial payments and failed to clear the full dues despite repeated reminders from the Operational Creditor. As the outstanding amount stood at ₹10,18,16,863/-, the Appellant issued three demand notices under

Section 8 of IBC, the last one being on 27.01.2022**.** Since the Corporate Debtor did not make good the outstanding debt, the Section 9 application was filed by the Appellant which was erroneously rejected by the Adjudicating Authority.

4. It was vehemently contended that the Adjudicating Authority held the section 9 petition to be non-maintainable by misapplying Section 10A of the IBC. It was asserted that the Adjudicating Authority had failed to appreciate that the dates of default were inadvertently and erroneously shown by the Appellant in Part IV of Form 5 as 03.05.2020 for BHEL Sikka Site; as 15.08.2020 for Package-O and 25.11.2020 for Package-17 of the Section 9 application. It was contended that Adjudicating Authority should have considered their pleadings and examined the documents on record to determine the actual date of default instead of relying on the date of default reflected in the demand notice by the Appellant by mistake.

5. We have duly considered the arguments advanced by the Learned Counsel for the Appellant and perused the records carefully.

6. The short issue for our consideration is the maintainability of the present Section 9 application in the backdrop of the statutory provision contained in section 10A of the IBC.

7. At the very outset, it would be prudent to refer to the details of the operational debt claimed by the Operational Creditor in Part IV of Form 5 as placed at page 192- 193 of Appeal Paper Book (‘**APB**’ in short). The particulars are as extracted below:

PART IV

PARTICULARS OF OPERATIONAL DEBT		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTION ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FEL LDUE	Total Amount Due from Gannon Dunkerley & Co. -Ltd. is Rs. 10,18,16,863/- (Rupees Rupees Ten Crores Eighteen Lakhs Sixteen Thousand Eight hundred Sixty three Only) a) Out of which Rs.1,96,04,794/- stands outstanding for contractual work carried out for Civil Work, Fabrication, Masonry, Mechanical, work at BHEL Site, Sikka which fell due on 03.05.2020. b) Out of which Rs. 3,12,87,916/- stands outstanding for contractual work carried out for Road Widening and Road Reconstruction for Dewas to Newari Road for MPRDC, Package-O which fell due on 15.08.2020 c) Out of which Rs. 5,09,24,153/- stands outstanding for contractual work carried out for Road Widening and Road Reconstruction for Rangwasa-Agra- Girota for MPRDC, Package-17 which fell due on 25.11.2020
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKING FOR DEFAULT TABULAR FORM)	10,18,16,863/-(Rupees Ten Crores Eighteen Lakhs Sixteen Thousand Eight Hundred Sixty Three Only) Bhel Sikka Site - 03.05.2020, PKG-O Site - 15.08.2020 PKG Site- 01.01.2021 Separate sheet enclosed stating Computation of Default and interest claimed thereon from the date of initial refusal to pay for the outstanding amount. (Annexed as Exhibit 'C')

When we peruse Part IV of Form 5 as annexed in the Section 9 petition, we find that the dates of default have been clearly shown as 03.05.2020, 15.08.2020 and 01.01.2021 in respect of the outstanding operational debt claimed by the Operational Creditor. The same dates of default have also been mentioned in Form 3 of the Demand Notice dated 27.01.2022 as is seen at page 170 of APB.

8. This brings us next to the question as to whether these three dates of default mentioned in Section 8 Demand Notice and Section 9 application fall within the purview of the prohibited period prescribed under Section 10A and consequentially hit by the bar imposed by Section 10A of the IBC.

9. To appreciate the applicability of the bar imposed by Section 10A in the present factual matrix, it would be relevant to notice the provisions of Section 10A of the IBC, 2016 which is reproduced as follows:

> ***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 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.*

10. The ambit and scope of Section 10A has been well settled in the landmark judgment of the Hon'ble Supreme Court in ***Ramesh Kymal Vs Siemens***

Gamesha Renewable Power Pvt. Ltd. (2021) 3 SCC 224 wherein it was held that no application for initiation of CIRP under Section 9 can be initiated for default which is committed during the Section 10A period. Since the ***Ramesh Kymal judgment supra*** has been relied upon by the Adjudicating Authority and paragraph 11 of the ***Ramesh Kymal judgment supra*** has been reproduced at para 20 of the impugned order, we do not feel the need of reproducing the same here. It is well settled in terms of this judgement of the Hon'ble Apex Court that if any Corporate Debtor suffered default on account of Covid-19, they should be protected from the filing of any insolvency application in respect of default committed by them during this prohibited period. Thus, any default committed after 15.03.2020 till 28.02.2022 (extended period of suo-moto limitation) enjoyed complete immunity from initiation of CIRP proceedings.

11. In the present case, the dates of default of the claims, basis which the Section 9 application has been filed, the dates indisputably fall during the prohibited period of Section 10A of IBC. The dates of default in the present facts of the case fell between 03.05.2020 and 01.01.2021 which dates were hit by Section 10A of the IBC. In terms of the statutory provision of Section 10A and as held by the Hon'ble Supreme Court in ***Ramesh Kymal judgment supra***, no default falling within this period can form the basis for initiating CIRP since the default which occur during the Section 10A period cannot be included in the calculation of debt and default for initiating CIRP.

12. When we look at the impugned order, we find that the Adjudicating Authority has gone into the Demand Notice and the dates of default to arrive at the conclusion that the dates of default are hit by Section 10A of IBC. The relevant excerpts of the impugned order are as reproduced below:

> *"21. As per Part IV of Form 5 annexed in the Petition, the date of default falls on 03.05.2020, 15.08.2020 and 01.01.2021. Prima facie, these dates fall under the purview of the period covered by Section 10A of the Code. These dates have been mentioned in Part IV of Form 5 as well as in the Demand Notice dated 27.01.2022. Furthermore, the dates of default mentioned in the Demand Notice dated 27.01.2022 were also 03.05.2020, 15.08.2020 and 25.11.2020. We note that, the due date of all the invoices shall be assessed separately and the invoices which fall within the period of 10A shall be excluded. In the present case, all the 3 dates of default mentioned, fall within the period prescribed under Section 10A of the Code, therefore as per the provisions of section 10A of the Code, the present petition cannot be proceeded with on this ground also."*

13. No liability can be fastened on the Corporate Debtor for default committed during Section 10A period. The Adjudicating Authority has therefore not committed any error in holding the Section 9 application as non-maintainable. We find no error in the impugned order holding that since the date of default falls within the Section 10A period, Section 9 proceedings under IBC cannot be initiated at the instance of Operational Creditor.

14. The contention of the Appellant that the Adjudicating Authority should have modified the date of default after examining the records is an absurd proposition. If the date of default required any change or modification, the onus was on the Appellant to have sought leave of the Adjudicating Authority to file an amendment application. To expect the Adjudicating Authority to have amended the date of default without any amendment application or specific pleading made for such a modification would tantamount to the Adjudicating Authority exceeding its jurisdiction which cannot be countenanced.

15. In fine, we do not find any merit in the Appeal. The Appeal is dismissed. The impugned order does not warrant any interference. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi
Date: 01.04.2025

Abdul/Harleen