

Rejection of CIRP Applications on the basis of Form D (Record of Default) issued by NeSL- Information Utility

NCLT, Mumbai Bench-VI, in the CIRP Application filed by REC Limited (formerly known as Rural Electrification Corporation Ltd) under Section 7 of IBC, 2016 (CP (IB) No. 956/MB/2023, has rejected the application for initiation of Corporate Insolvency Resolution against the Corporate Debtor M/s Global Metal & Energy Private Limited vide Order dated 15.10.2024.

In the above-mentioned Order, the Hon'ble members of NCLT have placed reliance on the contents of the Records of Default issued by NeSL-IU in determining whether **date of default is falling under period of suspension for initiation of CIRP as provided in Sec 10A of IBC, 2016**, for rejecting the application filed under Section 7 of IBC, 2016, read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP.

The relevant extracts of the Orders of NCLT are as under:

Page 10 - Para 5.3:

“Adverting to the facts of the present case, it is observed that the Financial Creditor has in Column 2 of Part-IV of the Application clearly stated that the Corporate Debtor defaulted in its payment towards the loan on 31.12.2020 and its loan account has continued to be in default since then. Therefore, it is an admitted fact that the date of default in the instant case is 31.12.2020 which falls within the prohibited period covered by Section 10A. Further, on perusal of the two records of financial information filed by the Financial Creditor ... with the National E-Governance Services Limited on 05.08.2021, it is observed that the date of default is mentioned therein as 31.12.2020...”

Page 12 – Para 5.5:

“We maintain that the date of default has to be determined with reference to the point of time when the debt became due and payable and was not paid by the Corporate Debtor and not when the debt recall notice was issued by the Financial Creditor. Therefore, the date of default occurring within the prohibited period cannot be shifted merely because a notice for payment is issued again after the end of such prohibited period...”

Page 13 – Para 5.6:

“...we are of the considered view that the present Application is clearly barred by Section 10A of the Code and consequently, it is not maintainable and is liable to be rejected.”

Page 13 – Order:

*“In view of the aforesaid findings, this Application bearing C.P.(IB) No.956/MB/2023 filed under Section 7 of the Code by REC Limited, the Financial Creditor, for initiating CIRP in respect of Global Metal & Energy Private Limited, the Corporate Debtor is **rejected**.”*