

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Comp. App. (AT) (Ins) No. 1678 of 2023

IN THE MATTER OF:

Mani Gupta

...Appellant

Versus

HDFC Bank Ltd. & Anr.

...Respondents

Present:

For Appellant : **Mr. Prakhar Mithal & Mr. Arjun Katyal,**
Advocates.

For Respondents : **Mr. Bheem Sai Jain, for R-1.**

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 30.11.2023 by which an application filed by HDFC Bank Limited (Financial Creditor/FC) against M/s Mountain Meadow Holidays Pvt. Ltd. (Corporate Debtor/CD) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') has been admitted and Umesh Gupta was appointed as the Interim Resolution Professional (in short 'IRP').

2. The appeal has been filed by Mani Gupta, suspended director of the CD.

3. The CD furnished a corporate guarantee for the loan facility availed by M/s Madhuvan Tieup Pvt. Ltd. which is already in CIRP in IB/25/ND/2023 which was admitted on 05.07.2023.

4. The particulars of the Financial Debt coupled with the date of default mentioned in part iv of the application filed under Section 7 are as under:-

PART-IV PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	DATE OF SANCTIONS ALONGWITH AMOUNTS: - 1) 31.05.2017: RS. 61.50 CRORES 2) 11.05.2018: RS. 25.00 CRORES
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	AMOUNT: RS. AMOUNT: RS. 104,91,22,695.66/- (RUPEES ONE HUNDRED FOUR CRORE NINETY TWO THOUSAND SIX HUNDRED NINETY FIVE AND PAISA SIXTY SIX ONLY) AS ON 05.07.2023 ALONG WITH FUTURE INTEREST FROM 05.07.2023. DATE OF DEFAULT: > 27.12.2019: THE ACCOUNT OF THE CORPORATE DEBTOR STOOD CLASSIFIED AS NPA. > CORPORATE DEBTOR AS WELL AS THE CORPORATE GUARANTOR ACKNOWLEDGED THEIR LIABILITY TO PAY THE OUTSTANDING AMOUNT TO THE APPLICANT BANK IN THEIR DULY AUDITED BALANCE SHEET FOR THE YEARS ENDING ON 31.03.2021 & 31.03.2022 (DETAILED STATEMENT OF ACCOUNT ALONGWITH INTEREST CALCULATION SHEET IS ANNEXED ALONGWITH THE PRESENT APPLICATION).

5. In part v of the application, the Financial Creditor relied upon the following documents:-

- i. Copy of Loan Agreement dated 12.06.2016 and 15.05.2018.
- ii. Copy of the Guarantee Deed 12.06.2017 and 15.05.2018
- iii. Copy of the Finance Facility Agreements executed on 11.02.2022.
- iv. Copy of the cheques that are signed by the Applicants in the discharge of the liability.
- v. Copy of provisional Balance Sheet as of 04.03.2022,
- vi. Copy of the relevant WhatsApp communications.
- vii. Copy of the notices dated 20.07.2022 and 26.07.2022.

viii. Copy of the Bank Statement/certificate of the Applicants.”

6. As per the order of the Tribunal, despite notice, the CD did not appear, therefore, it was proceeded against ex-parte on 14.09.2023. It has been found by the Court that the CD executed a guarantee deed dated 12.06.2017 to secure the loan availed by the principal borrower. The application under Section 7 was filed on 04.08.2023. The Tribunal after examining the material on record came to a conclusion that there is a debt and default on the part of the CD and hence, admitted the application by its impugned order dated 30.11.2023, declared moratorium under Section 14 of the Code and appointed the IRP.

7. The appeal filed by the Appellant is predicated on the issue of wrongly proceeding against the Appellant ex-parte which is evident from the order passed at the time of preliminary hearing.

8. On 21.12.2023, the following order passed by this Court: -

“Learned counsel for the Appellant submits that the Adjudicating Authority passed the order ex-parte since notice was not served. It is submitted that the acknowledgment relied is not acknowledgment under Section 18 of the limitation act. Further, there was no invocation of the guarantee. Learned counsel for the Respondent submits that before the Adjudicating Authority affidavit of service bringing on record all relevant materials was filed. It is submitted that in the application which was filed by the Financial Creditor itself mentions the Loan Recall Notice and Notice under Section 13(2) of SARFAESI Act, 2002 and guarantee was invoked and there was acknowledgment in the year 2020.

Submission needs scrutiny.

Issue notice. Learned counsel for the R-1 accepts notice. Let notice be issued on Respondent No.2.

Let Reply be filed by the Respondents within three weeks. Rejoinder be filed within two weeks thereafter.

List this Appeal on 07.02.2024.”

9. However, during the course of hearing, the Appellant changed its argument and submitted that the application under Section 7 was barred by Section 10A.

10. Counsel for the Respondent had submitted that this plea is not taken in the grounds of appeal, therefore, he was not prepared in this regard, therefore, on 06.12.2024, the following order was passed this Court:-

It is submitted by Counsel for Respondent that the bar of section 10A has not been taken by the Appellant in the memorandum of appeal and has been raised for the first time during the course of hearing. He requests that he may be allowed for some time to react. Adjourned to 16th December, 2024.

11. Counsel for the Respondent also filed an affidavit in support of his contention that the application filed under Section 7 is still maintainable in view of last notice given on 11.06.2022.

12. The judgment in this case was reserved on 03.07.2025 and at that time the only issue raised in this appeal was regarding the maintainability of the application filed by the FC in view of Section 10 A of the Code.

13. Counsel for the Appellant has argued that not only in part iv of the application, the date of default is mentioned as 27.12.2019 in respect of default committed by the CD but also as per the corporate guarantee deed, the guarantee can be invoked only by way of demand notice which was issued by the Respondent Bank under Section 13(2) of the SARFAESI Act on 28.07.2020 asking the Appellant to make the payment within a period of 60

days which had expired on 27.09.2020. It is also submitted that the Respondent had issued another notice on 01.08.2020 which also fell within the period of 10A which operates from 25.03.2020 to 24.03.2021. The Appellant has relied upon decisions of this court in the case of Pooja Ramesh Singh Vs. State Bank of India & Ors., CA (AT) (Ins) No. 329 of 2023 and Mudit Mandanlal Gupta Vs. Supreme Constructions & Developers Pvt. Ltd., CA (AT) (Ins) No. 920 of 2023 to contend that the default of the guarantor start from the date of invocation of the guarantee by notice and also relied upon a decision of this court in the case of Ashok Tiwari Vs. DBS Bank India Ltd. & Ors., CA (AT) (Ins) No. 464 of 2022 to contend that if the Tribunal has not granted sufficient opportunity to the CD to file its reply as provided in Rule 37 of the NCLT Rules by rejecting the request of the CD to file the reply on the very first date then it is denial of principles of natural justice.

14. On the other hand, while contesting the argument raised by the Appellant, Counsel for the Respondent has submitted that last and final notice was given by the Respondent on 11.06.2022 which is outside the period of Section 10A, therefore, the application filed under Section 7 is not hit by Section 10A of the Code. In this regard, he has relied upon a decision of this Court in the case of Harish Raghavij Patel Vs. Clearwater Capital Partners Singapore Fund IV Pvt. Ltd. & Ors., 2023 SCC OnLine NCLAT 2367.

15. We have heard Counsel for the parties and perused the record with their able assistance.

16. In this case, no doubt that the Appellant has not filed the appeal on the issue that the application filed under Section 7 is hit by Section 10A as the appeal was filed only on the issue that the Appellant was wrongly proceedings against ex-parte and deserves a right to be heard by the Tribunal to contest the application filed under Section 7 by filing reply etc.

17. Be that as it may, the Appellant has invoked Section 10A of the Code which is a legal issue and goes to the root of the case, therefore, we have examined the case of both the parties and facts available on record to find out as to whether the application filed under Section 7 is hit by Section 10A?

18. Before we proceed with the facts of the case and the law applicable thereto, it would be relevant to refer the Section 10A which is reproduced as under:-

“Section 10A. Suspension of Initiation of corporate insolvency resolution process. –

Notwithstanding anything contained in section 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.”

19. There is no dispute that the amount in default is 104,91,22,695.66/- and in part iv of the application the date of default is mentioned as 27.12.2019

which is before the Section 10 A period but according to the Appellant notice for invocation of guarantee was issued by the Respondent on 28.07.2020 and 01.08.2020 which both fell within the period of 10A.

20. We have examined both notice dated 28.07.2020 and 01.08.2020 but the language used in the said notices does not show that the said notices were final notices issued by the Respondent bank rather the final notice was issued by the bank was on 11.06.2022. The language of the said notice read as under:-

In these circumstances, the undersigned being Authorized Officer, hereby call upon you jointly and severally to discharge in full the Bank's liability aggregating to **Rs.74,62,93,949.14 (Rupees Seventy Four Crore Sixty Two Lakh Ninety Three Thousand Nine Hundred Forty Nine and Paisa Fourteen Only)** as on 17-Jul-2020 together with further interest, penal interest, cost and charges thereon till the date of payment, as per agreed terms and conditions mentioned in the Loan Agreement and other documents pertaining to the Loan/credit facilities availed by you, the Addressees. It is informed that no further notice whatsoever will be given to you and the secured asset will be sold as aforesaid.

21. In this regard, the decision of this Court in the case of Harish Raghavij Patel (Supra) would come to the rescue of the Respondent because in that case it has been held that :-

“10. It is well settled that when default is committed during Section 10A period and subsequent to Section 10A period, application is fully maintainable for any default subsequent to Section 10A period. Learned Counsel for the Respondents has relied on Judgment of this Tribunal in Mr. T. Prabhakar Vs. Mr. S Krishnan, C.A.(AT) (CH) Ins. No. 217 of 2021. Reliance has also been placed on the Judgment of this Tribunal in [Dharmesh S Jain Vs. SREI Equipment Finance Pvt Ltd](#), 2023 SCC OnLine NCLAT 6 where default was both during 10A period and subsequent to Section 10A period. In paragraph 12, following was noticed:

"12. Now we come to the question of debt and default. The Adjudicating Authority in the impugned order in paragraph 8 of the judgment has held that default on or after 05.04.2020 was for an amount of Rs.1,12,73,387/-. The learned counsel for the financial creditor submitted that even after the period covered by Section 10A came to an end, no payments are yet been made to the Financial Creditor by the Corporate Debtor. It is submitted by Financial Creditor that huge dues have been accumulated against the corporate debtor as on date. In the 3rd status report, Company Appeal (AT) Ins. No. 460 of 2023 the IRP has stated that in pursuance of the Public Announcement claims of Financial Creditors have been received of Rs. 1930 crores in addition to claims of homebuyers of Rs. 29,43,69,469/- . There is no material brought on record except to the letter of the Swamih Investment Fund dated 03.06.2021, which provided for approval of fund subject to several conditions. The Financial Creditor submits that one of the condition was that NOC of Financial Creditor was required to be obtained, whereas no NOC have been obtained from Financial Creditor for the said fund."

11. The Application under Section 7 being filed for default which was on basis of default occurred subsequent to Section 10A period, we are of the view that application was not hit by Section 10A."

22. Thus, in view of the law laid down by this Court in the case of Harish Raghavij Patel (Supra), we are of the considered opinion that there is no substance in the appeal filed by the Appellant for setting aside the impugned order by which the application filed under Section 7 for the resolution of an amount of Rs. 104,91,22,695.66/- has been admitted.

23. No other point has been raised.

24. In view of the aforesaid facts and circumstances, we do not find any merit in the present appeal and the same is hereby dismissed. No costs.

I.As, if any, are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

New Delhi
04th August, 2025
Sheetal