NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 1372 of 2022

In the matter of:

Tribhuwan Singh ....**Appellant**

Vs.

State Bank of India & Anr. ...**Respondents**

For Appellant:	Mr. Abhijeet Sinha, Mr. Utsav Mukherjee, Ms. Smriti Churiwal, Mr. Jaiveer Kant, Advocates.
For Respondents:	Mr. Krishnendu Datta, Sr. Advocate with Ms. Avni Sharma, Ms. Varsha Himatengka, Advocates for R1.

ORDER

24.11.2022: Heard Shri Abhijeet Sinha, Learned Counsel for the Appellant.

2. This Appeal has been filed against the order dated 29.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by which Section 7 Application filed by the State Bank of India has been admitted. Financial facility of Rs. 178 Crore was sanctioned by the Financial Creditor out of which Rs.95 Crore was disbursed. On default committed, the Financial Creditor filed Section 7 Application in which Application the Corporate Debtor objected to the admission of the Application raising various grounds including the ground of limitation, Section 10A and also that the Corporate Debtor has been taking steps to settle the matter with the Bank.

3. The Adjudicating Authority considered the submissions and admitted the Application. It is held by the Adjudicating Authority that the Application is not barred by limitation. Even if submission of the Corporate Debtor is accepted that the default occurred in May, 2015, there has been acknowledgment for the period 31.03.2014 to 31.03.2019 by the Corporate Debtor. With regard to Section 10A, it was held that the date of default was clearly mentioned and NeSL Report on 05.12.2019 which is also the date of NPA as stated in Section 7 Application, hence, Section 10A does not in any manner affect the maintainability of the Application.

4. Shri Abhijeet Sinha, Learned Counsel for the Appellant challenging the order contends that even if the Application is held to be not barred by limitation, Appellant can always raise issue with regard to date of default. It is submitted that the notice was issued on 01.10.2020 and seven days were required for payment, hence, the period of default occurred in between the period under Section 10A. The said issue has been categorically dealt with by the Adjudicating Authority in paragraph 14 (ii) with which we are in full agreement. Default having been committed prior to 10A period, Section 10A has no application.

5. Insofar as the submission of the Counsel for the Appellant that Appellant has to receive payment from government which having not been received, the Corporate Debtor could not make the payment and it is expected that the amount shall be received soon so that non-payment is not reason to send the Corporate Debtor to Insolvency. When the event of default has occurred as per the Agreement between the Financial Creditor and the

Corporate Debtor, we do not find any illegality in filing Section 7 Application by the Financial Creditor for initiation of CIRP.

6. Learned Counsel for the Appellant lastly contended that there was also default committed by the State Bank of India in not disbursing the full amount. We are of the view that the said argument is wholly irrelevant for the Section 7 Application filed by the Bank.

7. We are of the view that the Adjudicating Authority has not committed any error in admitting Section 7 Application. There is not merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

[Barun Mitra]
Member (Technical)

Anjali/nn