

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Ins.) No. 294 of 2023**

**IN THE MATTER OF:**

**Narayan Mangal**

**....Appellant**

**Vs.**

**Vatsalya Builders & Developers Pvt. Ltd.**

**....Respondent**

**Present:**

**For Appellant: Mr. Abhishek Naik, Advocate along with Mr. Narayan Mangal- Party in person & Ms. Gulafsha Kureshi.**

**For Respondent: Mr. Dhruv Gupta, Ms. Bhumi Agarwal, Mr. Aditya Agarwal, Advocates**

**ORDER**

**18.08.2023:** Heard Learned Counsel for the appellant and Learned Counsel appearing for the Respondent. This appeal has been filed against the order dated 09.01.2023 passed by Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) by which order Adjudicating Authority has rejected Section 7 application filed by the Appellant. The Appellant claiming to be the Financial Creditor of the Corporate Debtor has filed the application under Section 7 claiming debt and default of Rs.1,00,59,922/-. The said amount claimed by the appellant included principle of Rs. 65 lakhs as well as interest of Rs.35,59,922/- as on 25.05.2022.

2. Notice were issued by the Adjudicating Authority to which a reply was filed by the Corporate Debtor opposing the Section 7 application, Adjudicating Authority by the impugned order rejected the application. Only reason given by the Adjudicating Authority in paragraph 2 of the order is as follows:

*“2. This Bench on perusal of records, noticed that, the present Company Petition was filed below the threshold limit as per the Notification issued by the Ministry of Corporate Affairs vide Notification dated 24.03.2020. Hence, this Bench is of the considered view that the Company Petition filed u/s 7 of the Code is not maintainable and the same is liable to be dismissed.”*

3. Learned Counsel for the appellant challenging the order submits that Adjudicating Authority has not given any reason as to why the threshold is not fulfilled in the Section 7 application. It is submitted that when the part-IV of the application clearly mentioned the total amount of Rs.1,00,59,922/- threshold was fully met and Adjudicating Authority committing error in rejecting the said application.

4. Learned Counsel for the Appellant submitted that interest calculation sheet was also annexed (at page 90 of the appeal paper book) along with Section 7 application. It is submitted that in the said application interest calculation sheet from 13.12.2019 to 23.05.2022 was added, hence, there was no reason to reject the application not fulfilling the threshold. It is submitted that amount of 65 lakhs was due as per settlement entered by the Corporate Debtor dated 12.12.2019. As per the settlement the Corporate Debtor agreed to make the payment of Rs. 71 lakhs, out of which Rs. 6 lakhs was paid and Rs. 65 lakhs was balance. The cheques given by the Corporate Debtor were all dishonored. It is submitted that date of default is 01.02.2020 as mentioned in the Part-IV.

5. Counsel for the respondent refuting the submission of the counsel for the appellant contends that according to own showing of the appellant the interest has been calculated from 13.12.2019 to 23.05.2022 which also includes the

interest from 14.04.2020 to 14.03.2021. It is submitted that the said period was covered by Section 10A period, hence, the interest during the aforesaid period could not have been added in Section 7 application and said interest amount if deleted from the total amount the threshold is not fulfilled. It is submitted that although adjudicating Authority has not given the detailed reason but this is the main reason for rejecting the application.

6. We have considered the submission of counsel for the appellant and perused the record.

7. Section 10A of the Insolvency & Bankruptcy Code, 2016 is provides as follows:

**“Section 10A: Suspension of initiation of corporate insolvency resolution process-** *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”.*

8. The object and purpose of Section 10A has been explained in the ordinance by which Section 10A was brought on record as well as the Hon’ble Supreme Court in the Judgment of “*Ramesh Kymal vs. M/s Siemens Gamesa Renewable [Civil Appeal No. 4050 of 2020]*”. In the Judgment delivered today by this Tribunal on 18.08.2023 in Company Appeal (AT) (Ins.) No. 914 of 2023, we have occasion to notice the object of Section 10A. We have referred to the

objects and reason as given in the ordinance in paragraph 8 of the Judgment which is as follows:

*“8. In Ramesh Kymal’s Case, the Appellant had filed an Application under Section 9 on 11th May, 2020 on the ground of default. The ordinance No. 09/2020 was promulgated by the President of India on 05th June, 2020 by which Section 10A was inserted into the I&B Code, 2016. An Application was filed by the Corporate Debtor for dismissal of Section 9 Application, the Section 9 Application was dismissed on the ground of Section 10A. Challenging the order of the Adjudicating Authority as well as Appellate Tribunal, Appeal was filed in the Supreme Court. Argument which was advanced before the Hon’ble Supreme Court was that Section 10A having been inserted in the statute book with effect from 05th June, 2020, it shall not apply on the Applications filed prior to the said date, which argument was rejected by the Hon’ble Supreme Court and relevant observations have been made in Paragraphs 22,23 and 24 as has been noted above. The Hon’ble Supreme Court affirmed the Order of the Adjudicating Authority holding that default in Section 9 Application being on 30th April, 2020 it being covered by Section 10A, Application was rightly rejected. The above judgment of the Hon’ble Supreme Court has laid down that if the default is after 25th March, 2020, the Application is hit by Section 10A. The object as was indicated in the ordinance for bringing Section 10A in the statute book is relevant to notice which is to the following effect:*

*“AND WHEREAS a nationwide lockdown is in force since 25th March, 2020 to combat the spread of COVID-19 which has added to disruption of normal business operations:*

*AND WHEREAS it is considered expedient to suspend under Sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 to prevent corporate persons*

*which are experiencing distress on account of unprecedented situation, being pushed into insolvency proceedings under the said Code for some time;*

*AND WHEREAS it is considered expedient to exclude the defaults arising on account of unprecedented situation for the purposes of insolvency proceeding under this Code.”*

9. In the present case the question which has to be answered is as to whether if the interest payments accrued during the Section 10A period whether the said interest amount is to be deducted while computing the threshold. Present is not a case where bar of Section 10 A has been pressed rather present is the case where submission is that the interest amount which is occurring during the Section 10 A period should be excluded from computation of threshold.

10. The Section 10 A provides that no application/proceedings under Section 7,9 & 10 is to be initiated for a default which is committed during Section 10A period. What is bar is initiation of proceedings when Corporate Debtor commits default in Section 10 A period. If the default is committed prior to Section 10A period and continues in the Section 10 A period the initiation of proceeding is not barred.

11. In the Judgment of this Tribunal delivered in “*Raghavendra Joshi Vs. Axis Bank Limited*” we have already held that if default was committed prior to Section 10 A period, Section 10 A shall not be applicable. Following has been held by us in paragraph 15 & 16:

*“15. The submission that since default was also committed by the Corporate Debtor during the Section 10A period of the OTS amount*

*which ultimately withdrawn on 25th January, 2021, the Application should be barred by Section 10A does not commend us. There being categorical default by the Corporate Debtor prior to Section 10A period, the Appellant was not clearly entitled for the benefit of Section 10A Period.*

*16. Learned Counsel for the Respondent has rightly relied on Judgment in “Company Appeal (AT) Ins. No. 1016 of 2022, Vishal Agarwal Vs. ICICI Prudential Real Estate AIR-I & Anr.” where this Tribunal has held that when default was committed prior, application shall not be barred. In paragraph 7 and 8, following have been held:*

*“7. The submission of the learned counsel for the Appellant that as per Annexure-3 clause 6, the date of repayment of installment is 31.08.2020 only is not acceptable. There being clear admission on behalf of the Appellant in default in payment of interest for the quarters ending September 2019 and December 2019, Appellant cannot be permitted to contend that default was committed only on 31.08.2020. In so far as application being barred by 10A, benefit under Section 10A can be claimed by the application only when there is clear default during the prohibited period. The said benefit cannot be claimed by the Appellant by ignoring the admission of default which was prior to 25.03.2020. There being clear admission in the present case, in letter dated September 9, 2021 where the Corporate Debtor itself has admitted that he has failed to pay interest for the quarters ending September 2019 and December 2019 thus acknowledging that it has defaulted in servicing its obligations under the DSA.*

*8. We, thus, are of the view that the Adjudicating Authority has after considering all relevant facts and after finding debt and default has admitted the application. The fact that before this Tribunal, the Appellant has taken four adjournments for proposing OTS and get settle with the Bank itself indicate that debt and default is not disputed.*

*We, thus, are of the view that there is no merit in the Appeal.  
Appeal is dismissed.”*

12. If the default is committed prior to Section 10 A period and default continues there is no prohibition in initiating proceedings under Section 7 and we are not persuaded to accept the submission of the counsel for the respondent that the liability of interest which accrued during Section 10 A period should be ignored or should not be computed in the amount while finding the threshold. Liability to pay interest which default committed prior to Section 10 A period continues and is not obliterated by Section 10 A.

13. We, thus, are of the view that Adjudicating Authority committed error in rejecting the Section 7 application the threshold being complete.

14. We, thus, allow the appeal and set aside the order dated 09.01.2023, we further direct that Adjudicating Authority to pass fresh order admitted Section 7 application within 30 days from today. During the period of 30 days it will open for the parties to settle the matter, if so advised.

**[Justice Ashok Bhushan]  
Chairperson**

**[Mr. Barun Mitra]  
Member (Technical)**

*sa/nn*