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

**Company Appeal (AT) (Insolvency) No. 1086 of 2022**

**IN THE MATTER OF:**

**Abhijit Sinha** **...Appellant**

**Versus**

**Asset Reconstruction Company (India) Ltd.** **...Respondent**

**Present:**

**For Appellant:** Mr. Ritesh Singh, Mr. Navneet Kishore Singh, Advocates

**For Respondent:**

**O R D E R**

**15.09.2022:** Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 14th July, 2022 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata. Learned Counsel for the Appellant challenging the Order dated 14th July, 2022 contends that under Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regulation 2-A, the Appellant has not filed the necessary document to prove the evidence of default. He submits that even though at the time of filing Application which was in the year 2019, provision of Regulation 2-A was not there but when they filed the Rejoinder-Affidavit in the proceeding, the same ought to have been filed. He further submits that the admission of Rs. 2 Crores was only with regard to the amount of Rs. 2 Crores and there is no liability of the Corporate

Debtor to make payment beyond Rs. 2 Crores. It is further submitted that there was no evidence filed by the Financial Creditor to prove the default.

3. We have considered the submissions of Learned Counsel for the Appellant and have perused the record.

4. Coming to the Regulation 2-A, which has been inserted in Regulation by notification dated 13.11.2020, the Regulation 2-A is as follows:

> *"**2-A. Record or evidence of default by financial creditor**.-For the purposes of clause (a) of sub-section(3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely:-*
>
> *(a) certified copy of entries in the relevant account in the banker's book as defined in clause (3) of section 2 of the Banker's Books Evidence Act, 1891 (18 of 1891);*
>
> *(b) an order of a Court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired."*

5. The said Regulation cannot come to the help of the Appellant in any manner since the Application was filed in 2019, at that time Regulation 2-A was not there. The Financial Creditor was not obliged to comply the Regulation. The mere fact that Rejoinder was filed subsequently shall not put any statutory obligation on the Appellant to file the documents of evidence of default as provided in Regulation 2-A.

6. Now coming to the submission of Learned Counsel for the Appellant that admission of Rs. 2 Crores in the balance sheet does not make liable to the Corporate Debtor to make payment more than Rs. 2 Crores which is admitted by the Appellant, the question under admission of Section 7 Application is not as to what is correct liability of the Corporate Debtor when admission was there that the amount of more than One Crore was due, it was sufficient for admission of Section 7 Application.

7. Last submission of Learned Counsel for the Appellant that there was no document filed in support of the Financial Creditor's case that default was there. The Adjudicating Authority has considered the Application and other materials on record and has recorded a finding of 'debt and default'. We thus do not find any error in the admission of the Section 7 Application. There is no merit in the Appeal, the Appeal is dismissed.

**[Justice Ashok Bhushan]**
**Chairperson**

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

*Basant/nn*