

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

**Company Appeal (AT) (Insolvency) No. 1506 of 2024**

**IN THE MATTER OF:**

**Omkara Asset Reconstruction Pvt. Ltd. ...Appellant**

**Versus**

**Madhusudan Motors Pvt. Ltd. ...Respondent**

**Present:**

**For Appellants : Mr. Namit Suri, Ms. Surabhi Sinha, Advocates  
with Mr. Ravi, CS.**

**For Respondent :**

**ORDER**  
**(Hybrid Mode)**

**23.08.2024:** Heard Counsel for the Appellant.

**2.** This Appeal has been filed against an Order dated 07.06.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Allahabad Bench, Prayagraj) in I.A. No. 121/2024 in C.P. (IB) No. 57/ALD/2023. Application was filed by the Appellant for seeking amendment and rectification of date of default from 07.03.2021 to 25.07.2021.

**3.** Appellant claims an Assignee from the Financial Creditor which assignment was taken by the Appellant on 30.09.2021. Subsequently, the Appellant also issued Notice under Section 13(2) of the SARFAESI Act on 21.05.2022 and thereafter filed the Section 7 Application.

**4.** In Part-IV of Form-I the date of default mentioned was 07.03.2021 which is noted by the Adjudicating Authority in Paragraph 2 (vi) is as follows:

***“2 (vi) In the said captioned petition, as contended by the Applicant, the date of default was mentioned as 07.03.2021 in Para 2 of Part-IV of the Form-I, which pertained to the default committed by the Corporate Debtor qua the Lender Bank and this date was prior to***

*the date of Assignment of debt in favour of the Applicant.”*

**5.** The Application was filed to amend the date 07.03.2021 to 25.07.2021 which has been rejected by the Adjudicating Authority after considering the submissions of both the Parties.

**6.** Learned Counsel for the Appellant challenging the Order contends that default was continuing in nature hence the Appellant was entitled to change the date of default from 07.03.2021 to 25.07.2021. It is submitted that Assignee is not remediless with respect to default which was committed by the Corporate Debtor.

**7.** We have considered the submissions of Counsel for the Appellant and perused the record.

**8.** In Section 7 Application which was filed by the Appellant admittedly the date of default was also 07.03.2021 which was hit by Section 10A period.

**9.** Submission of the Appellant is that Appellant is not remediless, he can very well file Section 7 Application is a submission which can be accepted, in event the Application under Section 7 is filed on default subsequent to 10 A period.

**10.** Any Financial Creditor is at liberty to initiate Section 7 Proceedings when a default which is not covered by 10A period. Admittedly the Appellant has issued Notice under Section 13(2) and is entitled to take proceedings under SARFAESI Act.

**11.** Learned Counsel for the Appellant also referred to an Order dated 05.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Court III, in the matter of '*PHL Fininvest Private Limited*' Vs. '*Kay Jay Leasing Limited*'. It is submitted that in similar case, *Comp. App. (AT) (Ins.) No. 1506 of 2024*

Adjudicating Authority has allowed the amendment. The Order passed by the Adjudicating Authority in a different case may not be precedent for Appellant to rely in the facts of the present case.

**12.** Question of amendment is a question of facts which differs from case to case and in the present case where Part IV clearly mentioned the date of default which was hit by 10A, Adjudicating Authority did not commit in rejecting the Amendment Application.

**13.** We however make it clear that it shall be open for the Appellant to take such remedy as available in law.

The Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

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

**[Arun Baroka]  
Member (Technical)**

*himanshu/nn*