

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

**Company Appeal (AT) (Insolvency) No. 1036 of 2022**

(Arising out of Order dated 10.06.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P. (IB)/38 (KB) 2021)

**IN THE MATTER OF:**

**Hyline Mediconz Private Limited**

H-40 Green Park Extension,  
New Delhi – 110016

**...Appellant**

**Versus**

**Anandaloke Medical Centre Private Limited**

2<sup>nd</sup> Mile Sevoke Road,  
Siliguri, West Bengal – 734003.

**...Respondent**

**Present:**

**For Appellant: Mr. Pankaj Jain, Advocate.**

**For Respondents: Ms. Swapna Chaubey and Mr. Nirnimesh Dube, Advocates.**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

This Appeal by an Operational Creditor has been filed challenging the order dated 10.06.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by which application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') filed by the Appellant claiming an amount of Rs.41,10,166/- has been dismissed on the ground that it is

*Cont'd.../*

below the threshold limit of Rupees One Crore. The Appellant aggrieved by dismissal of his petition has come up in this Appeal.

2. The brief facts of the case necessary to be noticed for deciding this Appeal are:

- (i) The Appellant has rendered services related to installation of Modulation Operation Theatre and General Operation Theatre alongwith the supply of related equipment.
- (ii) Invoices were raised by the Appellant upon the Respondent from 24.07.2018 to 31.03.2019.
- (iii) Invoices being not paid a Demand Notice dated 05.03.2020 under section 8 of the I&B Code was issued demanding an amount of Rs.41,10,166/- including principal and interest.
- (iv) After the demand notice was delivered on 11.03.2020, an application under Section 9 was filed by the Operational Creditor on 18.01.2021, which came to be rejected by the Adjudicating Authority. The Adjudicating Authority by the impugned order accepting the submission of the Corporate Debtor, amount claimed being 41,10,166/-, which is below the threshold limit of Rupees One Crore held that the petition is non-maintainable.

3. Shri Pankaj Jain, learned counsel for the Appellant challenging the impugned order of the Adjudicating Authority has raised following submissions:

- (i) The default by the Corporate Debtor in paying the outstanding debt having been committed prior to 24.03.2020, by which date threshold of Rupees One Crore was introduced and the Demand Notice having been issued on 05.03.2020 i.e. prior to Notification dated 24.03.2020, the application filed by the Appellant under Section 9 on 18.01.2021 was maintainable. What is relevant for the purpose of Section 4 is the date of default. When the date of default is prior to Notification dated 24.03.2020, application under section 9 can be filed by the Operational Creditor on the basis of said default even after 24.03.2020 and such application is maintainable.
- (ii) In the present case, Section 8 notice was also served on the Corporate Debtor before 24.03.2020, hence the Application filed on 18.01.2021 was maintainable. It is further submitted that Section 4 should be harmoniously construed with the provision of Section 10A. The explanation under Section 10A especially refers to default prior to 25.03.2020. The right to action i.e. right to sue has already accrued towards Corporate Debtor prior to 24.03.2020 which could not be taken away by any subsequent Notification.

4. Learned counsel for the Respondent refuting the submissions of learned counsel for the Appellant submits that any application filed after 24.03.2020 has to fulfil the threshold of Rupees One Crore. Even if the date of default is prior to 24.03.2020 and the application is filed after 24.03.2020, threshold of Rupees one crore is to be fulfilled. On the basis of date of default prior to 24.03.2020 no application can be filed after 24.03.2020 which does not fulfil the threshold.

5. Learned counsel for both the parties have relied on various judgments of this Tribunal as well as judgments of Hon'ble Supreme Court which we shall refer hereinafter while considering the submissions of the parties.

6. Section 4 of the I&B Code which is in Part II of the Code provides as follows:-

***“4. Application of this Part. – (1) This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees:***

*Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.*

*<sup>1</sup>Provided further that the Central Government may, by notification, specify such minimum amount of default of higher value,*

*which shall not be more than one crore rupees, for matters relating to the pre-packaged insolvency resolution process of corporate debtors under Chapter III-A.]”*

7. Under Section 4 proviso, a Notification has been issued by the Central Government on 24.03.2020, which is to the following effect:-

**“MINISTRY OF CORPORATE AFFAIRS**

**NOTIFICATION**

*New Delhi, the 24<sup>th</sup> March, 2020*

**S.O. 1205(E).**—*In exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section.”*

8. Section 4(1) provides that “this Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees”. Part II of the Code deals with ‘Insolvency Resolution and Liquidation for Corporate Persons’. The applicability of the Part II is dependent on minimum amount of default as prescribed in Section 4(1). Minimum amount to default was Rupees One Lakh which has been subsequently amended to Rupees One Crore by Notification dated 24.03.2020. The applicability of Part II is dependent on minimum amount of default thus.

9. Section 6 of the Code provides for persons who may initiate Corporate Insolvency Resolution Process (CIRP). Section 6 is as follows:-

***“6. Persons who may initiate corporate insolvency resolution process.*** – *Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.”*

10. A default by the Corporate Debtor entitled a financial creditor and operational creditor to initiate Corporate Insolvency Resolution Process. The default is thus condition precedent for initiating CIRP. The minimum amount of default as has been prescribed under Section 4 of the Code has a purpose and object. The object is that unless there is a minimum amount of default, no person should be permitted to initiate CIRP. When the amount of default was amended from Rupees One Lakh to Rupees One Crore, the object was that no application for initiation of CIRP be filed unless the threshold is fulfilled. Section 5(11) defines the initiation date in following words:-

***“5(11) initiation date means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process 4 [or pre-packaged insolvency resolution process, as the case may be];”***

11. The initiation date is thus the date on which financial creditor, corporate applicant or operational creditor makes an application to the Adjudicating Authority. Part II of the Code is applicable only when minimum amount of default of Rupees One Crore is fulfilled after 24.03.2020. Thus, right to initiate the CIRP after 24.03.2020 is only on the condition that minimum default is of Rupees One Crore. There is no right to initiate CIRP after 24.03.2020 when minimum default is not Rupees One Crore.

12. The submission of learned counsel of the Appellant is that what is relevant is the date of default or the date when notice under Section 8 has been issued and the threshold as was applicable on the date when default is committed or notice under Section 8 is issued has to be determinative factor and when default is committed prior to 24.03.2021 and Section 8 notice is issued and served, the applicant has right to file application even after 24.03.2020 on the basis of earlier threshold.

13. When we look into the scheme of the Code, provision of Section 4, 6, 7, 8, 9 and 10 indicate that the provisions which provides for initiation of Corporate Insolvency Resolution Process and Part II of the Code applied to matters relating to insolvency Resolution Process for Corporate Debtor, where minimum default is Rupees One Crore (as on 24.03.2020). Thus, Part II of the Code is applicable only when default is of Rupees One Crore or more. There is no right to initiate an application under Section 9 on 24.03.2020 or thereafter if the minimum default of Rupees One Crore is not fulfilled. Thus, crucial date to find out applicability of the threshold

is the date when application to initiate CIRP is made. If we accept the submission of learned counsel for the Appellant that date of default or date of demand notice under Section 8 is to be taken and if default is less than Rupees One Crore which occurred prior to 24.03.2020 right should be given to the applicant to initiate the CIRP after 24.03.2020, it will be clearly contrary to the scheme of the Code as delineated by Section 4, 6, 7, 9 and 10. When the legislative scheme indicate that application for CIRP can be filed only after fulfilling the minimum threshold limit applicable w.e.f. 24.03.2020, no other interpretation of Section 4 can be given. When Section 4 empowers the Central Government to specify the minimum amount or higher value upto Rupees One Crore and power under Section 4 proviso has been exercised vide Notification dated 24.03.2020, the legislative intent is clear that threshold of Rupees One Lakh shall not apply henceforth i.e. 24.03.2020 and if initiation be made for an default, it should fulfil the minimum threshold of Rupees One Crore.

14. This Tribunal has occasion to consider this question in ***“Company Appeal (AT) (Ins.) No. 910 of 2022, V-Con Integrated Solutions Pvt. Ltd. vs. Argos Technology Resources Pvt. Ltd.”***. The submission was also made in the aforesaid case that default was committed prior to 24.03.2020, hence the notification dated 24.03.2020 is not applicable. Para 4 of the order notices the contentions of the Appellant in the above case and the consideration of submissions was in Para 6, 7 and 8. In Paras 6, 7, and 8 following was laid down:-

*“6. Section 4 of the Code provided initially threshold of Rs. 1 Lakh which was substituted vide Notification dated 24<sup>th</sup> March, 2020 to 1 Crore. The Submissions which has been pressed by the Learned Counsel for the Appellant is that the notification being prospective as has been held by this Tribunal in “Madhusudan Tantia” (supra) it should not apply on the default which had occurred prior to 24<sup>th</sup> March, 2020. We have perused the Judgment of this Tribunal in “Madhusudan Tantia”. In the above case, the Application under Section 9 was filed prior to 24<sup>th</sup> March, 2020 which fact is noticed in paragraph 5 of the Judgement. Emphasis has been laid by Learned Counsel of the Appellant in paragraphs 56 and 57 which are to the following effect:*

*“56. As far as the present case is concerned, this Tribunal, after carefully and with great circumspection, ongoing through the contents of the notification dated 24.03.2020 issued by the Ministry of Corporate Affairs, Government of India, whereby and whereunder the minimum amount of default limit was specified as Rs. one crore (obviously raising the minimum amount from Rs. one lakh to one crore) unerringly comes to a definite conclusion that the said notification is only ‘Prospective in nature’ and not a ‘retrospective’ one because of the simple reason the said notification does not in express term speaks about the applicability of ‘retrospective’ or ‘retroactive’ operation. Suffice it for this Tribunal to point out that from the tenor, spirit and the plain words employed in the notification dated 24.03.2020 of the*

*Ministry of Corporate Affairs, Government of India, one cannot infer an intention to take or make it retrospective as in this regard, the relevant words are conspicuously absent and besides there being no implicit inference to be drawn for such a construction in the context in issue. That apart, if the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, is made applicable to the pending applications of IBC (filed earlier to the notification in issue) it will create absurd results of wider implications / complications.*

*57. In view of the upshot and also this Tribunal, on a careful consideration of respective contentions advanced on either side and considering the facts and circumstances of the instant case in a conspectus fashion holds unhesitatingly that the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, is prospective in nature and it is not retrospective or retroactive in nature. Further, the said notification will not apply to the pending applications filed before the concerned 'Adjudicating Authority' (Authorities), under IBC (waiting for admission), prior to the issuance of the aforesaid notification, as opined by this Tribunal. Viewed in the above prospectives, the conclusion arrived at by the 'Adjudicating Authority' in the impugned order to the effect that the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, shall be considered as prospective and not retrospective and the finding that there was no payment on the side of 'Corporate Debtor' after receipt of Demand Notice, no pre-existing dispute also alleged or proved and*

*ultimately admitting the application filed by the 2<sup>nd</sup> Respondent / Operational Creditor are free from legal infirmities. Resultantly, the instant Appeal fails.”*

*7. When we read paragraphs 56 and 57, it is clear that this Tribunal categorically held that Notification dated 24<sup>th</sup> March, 2020 is only prospective and not a retrospective. This Tribunal held that the said notification will not apply to pending application of IBC. It is clear that Applications under Section 9 filed prior to 24<sup>th</sup> March, 2020 shall not be affected by the Notification dated 24<sup>th</sup> March, 2020 and notification being prospective shall apply to Applications filed thereafter. The provision is clear that the amendment shall come into force after its publication in the Gazette and Application filed thereafter has to fulfil the threshold as provided in Section 4 i.e. threshold of Rs. 1 Crore. In the present case, the Judgment relied by Learned Counsel for the Appellant does not contain any ratio that in event the default has been committed prior to 24<sup>th</sup> March, 2020 and Application is filed thereafter the same shall be governed by the unamended provision of Section 4 of the Code.*

*8. The Application in the Appellant’s case filed on 27<sup>th</sup> March, 2021 was rightly hit by threshold of Rs. 1 Crore as implemented with effect from 24<sup>th</sup> March, 2020. There is no error in the Order of the Adjudicating Authority, the Appeal is dismissed.”*

15. To the same effect is another judgment of this Tribunal in **“Company Appeal (AT) (Ins) No. 813 of 2021, Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd.”**. Learned counsel for the Appellant submits that against the aforesaid judgment of this Tribunal Civil Appeal No. 7032 of 2021 has been filed before the Hon’ble Supreme Court where notices have been issued. The order passed by the Hon’ble Supreme Court dated 01.04.2022 is as follows:-

**“O R D E R**

*Issue notice on the applications for intervention, stay as well as on appeal, returnable in six weeks.”*

The above order passed by the Hon’ble Supreme Court indicates that judgment of this Tribunal has not been stayed so as to take away the precedential value of the judgment.

16. Learned counsel for the Appellant has placed much reliance on the judgment of three member Bench in **“Company Appeal (AT) (Insolvency) No. 557 of 2020, Madhusudan Tantia vs. Amit Choraria & Anr.”**. Facts of the case indicates that in the above case as application under section 9 was filed in September, 2019 before the Adjudicating Authority being C.P. (IB) No.1735/KB/2019, subsequently, on 17.01.2020, Adjudicating Authority directed the Corporate Debtor to file a reply. When the Appeal came for hearing, submission was raised by the Corporate Debtor that operational debt is Rs.90,00,919.10/- only which is below the threshold limit of Rupees One Crore and the application  
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ought to be rejected. This Tribunal considered the above submission and held that the Notification dated 24.03.2020 is not retrospective in its operation and the Notification cannot be treated to be made applicable to the pending applications. In Para 56 and 57 of the judgment following has been laid down:-

*“56. As far as the present case is concerned, this Tribunal, after carefully and with great circumspection, ongoing through the contents of the notification dated 24.03.2020 issued by the Ministry of Corporate Affairs, Government of India, whereby and whereunder the minimum amount of default limit was specified as Rs. one crore (obviously raising the minimum amount from Rs. one lakh to one crore) unerringly comes to a definite conclusion that the said notification is only ‘Prospective in nature’ and not a ‘retrospective’ one because of the simple reason the said notification does not in express term speaks about the applicability of ‘retrospective’ or ‘retroactive’ operation. Suffice it for this Tribunal to point out that from the tenor, spirit and the plain words employed in the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, one cannot infer an intention to take or make it retrospective as in this regard, the relevant words are conspicuously absent and besides there being no implicit inference to be drawn for such a construction in the context in issue. That apart, if the notification dated 24.03.2020 of the Ministry of Corporate*

*Affairs, Government of India, is made applicable to the pending applications of IBC (filed earlier to the notification in issue) it will create absurd results of wider implications / complications.*

*57. In view of the upshot and also this Tribunal, on a careful consideration of respective contentions advanced on either side and considering the facts and circumstances of the instant case in a conspectus fashion holds unhesitatingly that the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, is prospective in nature and it is not retrospective or retroactive in nature. Further, the said notification will not apply to the pending applications filed before the concerned 'Adjudicating Authority' (Authorities), under IBC (waiting for admission), prior to the issuance of the aforesaid notification, as opined by this Tribunal. Viewed in the above prospectives, the conclusion arrived at by the 'Adjudicating Authority' in the impugned order to the effect that the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, shall be considered as prospective and not retrospective and the finding that there was no payment on the side of 'Corporate Debtor' after receipt of Demand Notice, no pre-existing dispute also alleged or proved and ultimately admitting the application filed by the 2nd Respondent / Operational Creditor are free from legal infirmities. Resultantly, the instant Appeal fails."*

17. The judgment in **‘Madhusudan Tantia’ (supra)**, thus, lays down that the Notification dated 24.03.2020 is prospective in nature and shall not be applicable on pending applications. The said judgment does not contain any ratio that when default was committed prior to 24.03.2020 and application was filed after 24.03.2020 the earlier threshold of Rupees One Lakh has to be looked into.

18. We may also refer to a judgment of this Tribunal in **“Company Appeal (AT) (CH) (INS) No. 55 of 2021, B. Sreekala vs. Al Sadiq Sweets and Ors.”** decided on 13.12.2021. In the above case, the cause of action arose on 03.01.2020 and application under Section 9 was filed on 16.09.2020 which was admitted by the Adjudicating Authority by order dated 26.02.2021. Appeal was filed by the Suspended Director of the Corporate Debtor contending that the application having not fulfilled the threshold of Rs.1 Crore was liable to be rejected. This Tribunal has taken a view that even if the default is of a date prior to 24.03.2020, after 24.03.2020 applicant has to be comply with threshold of Rs.1 Crore. Following conclusion was recorded in Para 80 of the judgment. This Tribunal, however, although allowed the Appeal by setting aside the order dated 26.02.2021 but held the application to be hit by Section 10A.

*“80. It is to be pointed out that a change in Law is a procedural one. A party is to avail the change in I & B Code, 2016, notwithstanding the fact his/its actionable right of ‘cause of action’ had arisen earlier to an amendment that has been brought about, increasing the threshold limit to*

*Rs. 1 Crore [vide Notification dated 24.03.2000 issued by the 'Ministry of Corporate Affairs' in S.O. 1205(E)] for considering the Application filed under Section 7 or 9 of I&B Code on after 24.03.2020, even if the 'Debt' is of a date prior to 24.03.2020. In law, a Party has no vested right in respect of a 'Fora', albeit he has a 'Actionable Right'. After all, the impediment in Section 10(A) of the I & B Code is to be viewed from the point of view of the purpose and object sought to be achieved in enacting the same by the Parliament in its wisdom."*

19. It is to be noticed that against the above judgment of this Tribunal dated 13.12.2021, **Civil Appeal No. 1914 of 2022** was filed by the Corporate Debtor 'Al Sadiq Sweets' which also was dismissed by the Hon'ble Supreme Court on 25.03.2022 by the following order:-

**“O R D E R**

*We have heard the learned senior counsel for the appellant and perused the record. We do not see any cogent reason to entertain the appeal. The judgment impugned does not warrant any interference.*

*The appeal is accordingly dismissed."*

20. We may also notice the judgment of Hon'ble Supreme Court in **“(2021) 5 SCC 1, Manish Kumar vs. Union of India & Anr.”**, where the Hon'ble Supreme Court had occasion to consider the provision of Section

7 second proviso. An amendment in Section 7 of the Code was made by Act 1 of 2020 inserting second proviso to the following effect:-

*“Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent of the total number of such allottees under the same real estate project, whichever is less:”*

21. The amendment in Section 7 came to be challenged before the Hon’ble Supreme Court by Writ Petitions. One of the submission raised before the Hon’ble Supreme Court was that the date of default of different allottees may be different and Section 7 proviso which now adds fulfilment of conditions for filing Section 7 application would adversely impinge on the absolute right which otherwise exists with an allottee. The above submission of the petitioner was noticed in Para 159 of the judgment, which is to the following effect:-

*“159. It is urged on behalf of the petitioners that the provisos requiring support of one hundred persons or one-tenth of the allottees, whichever is lower, is unworkable and arbitrary having regard to the provisions of the Code. There can only be one default in a complaint, it is contended. When the required number of allottees may have to be drawn from allottees*

*who may have entered into agreements with the builder on different dates, the date of default would be different. This would adversely impinge on the absolute right which otherwise exist with an allottee to make an application under Section 7 of the Code.”*

22. Hon'ble Supreme Court has held that in order to successfully move an application under Section 7 there must be a default which must be in a sum of Rupees One Crore. Following has been observed in Para 170:-

*“170. It is indisputable that in order to successfully move an application under Section 7 that there must be a default which must be in a sum of Rs.1 crore.”*

23. The Hon'ble Supreme Court held that in addition to the factum of default, application by allottee have to be filed by requisite number as introduced by the proviso. The argument that different default of allottees will make the provision unworkable was rejected. In para 171 following has been observed:-

*“171. The change that is brought about is only that apart from establishing the factum of default, he must present the application endorsed by the requisite number introduced by the proviso. Since, default can be qua any of the applicants, and even a person, who is not an applicant, and the action is, one which is understood to be in rem, in that, the procedures,*

*under the Code, would bind the entire set of stakeholders, including the whole of the allottees, we can see no merit in the contention of the petitioner based on the theory of default, rendering the provisions unworkable and arbitrary.”*

24. The Hon'ble Supreme Court further held that requirement of compliance with the threshold as introduced by second proviso to Section 7 has to be fulfilled as on the date of the filing of the application. In Para 178 following has been held:-

*“178. The question, then arises, as to the alleged lack of clarity about the point of time, at which the requirements of the impugned provisos, are to be met. Is it sufficient, if the required number of allottees join together and file an application under Section 7 and fulfil the requirements, at the time of presentation? Or, is it necessary that the application must conform the numerical strength, under the new proviso, even after filing of the application, and till the date, the application is admitted under Section 7(5)? There can be no doubt that the requirement of a threshold under the impugned proviso, in Section 7(1), must be fulfilled as on the date of the filing of the application.”*

25. The law laid down by the Hon'ble Supreme Court in the above case lend support to our conclusion that threshold of Rupees One Crore has to be fulfilled by an applicant under Section 9 on the date of filing of the

application. The fact that default was committed prior to 24.03.2020 and notice under Section 8 was issued and served prior to 24.03.2020 are not determinative or material although they are condition precedent for initiating an application under Section 9. We have noticed the provision of Section 6 which provides that where any Corporate Debtor commits a default, a Financial Creditor, an Operational Creditor or the Corporate Debtor itself may initiate Corporate Insolvency Resolution Process in respect of such Corporate Debtor in the manner as provided under this Chapter. Thus, a default is a condition precedent. Part II of the Code becomes applicable only when default is Rupees One Crore or more w.e.f. 24.03.2020 and an Operational Creditor can initiate Corporate Insolvency Resolution Process against the Corporate Debtor after 24.03.2020 when default is more than Rupees One Crore. No application can be initiated after 24.03.2020 irrespective of the date of default if the threshold of Rupees One Crore is not fulfilled.

26. The submission has also been pressed by learned counsel for the Appellant on the basis of Section 10A. It is submitted that 10A explanation specifically refers to default prior to 25.03.2020, which explanation has to be given meaning. Section 10A is as follows:-

*"10A. 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 25<sup>th</sup> 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 25<sup>th</sup> March, 2020."*

27. Section 10A was inserted in the Code to give protection to the Corporate Debtor from initiation of CIRP process with regard to default committed by the Corporate Debtor after 25.03.2020. The object and purpose of insertion of Section 10A was clearly to save the Corporate Debtor on account of ill-consequences which ensued after spread of COVID-19. 25.03.2020 is the date when lockdown was imposed in the entire country. Normal working of all factories as well as establishments were adversely affected by COVID-19, hence, Section 10A was inserted to give protection to the Corporate Debtor to save from initiation of any CIRP against them since the default committed by the Corporate Debtor was mostly due to ill-consequences of COVID-19. The explanation clearly indicates that the provisions of this section shall not apply to any default committed under the sections 7, 9 or 10 after 25<sup>th</sup> March, 2020. The idea was to give protection to the Corporate Debtor from default which was committed from 25.03.2020 for period of one year thereafter. We fail to see how explanation to Section 10A comes to any aid in Appellant's case.

Section 10A was introduced for entirely different object and purpose and could not be read to give any support to the submissions which have been made by the Appellant in the present case.

28. Another judgment of three member Bench in **“Company Appeal (AT) (Ins.) No. 129 of 2022, Saru International Pvt. Ltd vs. Arumani Traders”** is also a case where default was of Rs.39 Lakhs and application was filed on 10.08.2020. In the above case, the Adjudicating Authority passed an interim order which was challenged in the Appeal before this Tribunal. This Tribunal considered the Notification dated 24.03.2020 and held that application filed on 10.08.2020 under Section 9 for a default of Rs.39 Lakhs was not maintainable and thus liable to be dismissed. In Para 8 and 9 following has been held:-

*“8. By Notification dated 24.03.2020, the threshold for entertaining an Application under Section 9 has been raised from Rs. 1 Lakh to Rs. 1 Crore. The Notification and the provisions for increasing threshold, shall operate prospectively i.e. after 24.03.2020. In the present case, the Application was filed by the Operational Creditor on 10.08.2020 i.e. subsequent to above Notification raising the threshold. The amount claimed in Section 9 Application only Rs. 39 Lakh hence, it was less than the threshold and Application ought to have been thrown out on this ground. The Adjudicating Authority on 16.02.2021 has noticed the question and has granted time to Petitioner to explain.*

9. We are of the view that when the Application itself was not maintainable by virtue of Notification dated 24.03.2020, there was no necessity to proceed any further or pass any interim order as passed on 29.09.2021. We are satisfied that Application No. IB-100/(ND)/2021 was not maintainable and ought to have been dismissed. We thus, are of the view that Application No. IB-100/(ND)/2021 filed on 10.08.2020 was not maintainable and deserves to be dismissed. The Adjudicating Authority itself although had called upon the Appellant to explain the question for filing the petition but without advertent to the said question issued the interim order on 29.09.2021. In result, we allow this Appeal, set aside the order dated 29.09.2021 and also reject the Application No. IB-100/(ND)/2021 which does not fulfil the statutory requirements under Section 4 of the Code. The Appeal is allowed setting aside the order dated 29.09.2021 passed by the Adjudicating Authority as well as rejecting Application No. IB100/(ND)/2021.”

29. Learned counsel for the Appellant has also relied on judgment of Hon’ble Supreme Court in **“AIR 2001 SC 2984, Anwar Hasan Khan vs. Mohammad Shafi & Ors.”** where the Hon’ble Supreme Court laid down that *“for interpreting a particular provision of an Act, the import and effect of meaning of the words and phrases used in the statute has to be gathered from the text”*. There can be no dispute to the proposition regarding statutory interpretation laid down in the above case. When we

apply principle of statutory interpretation to Section 4, it is clear that Part II is not applicable after 24.03.2020 where default is less than Rupees One Crore. No application for initiation of CIRP can be entertained after 24.03.2020. The judgment of Hon'ble Supreme Court in **"Innoventive Industries Limited vs. ICICI Bank and Another, (2018) 1 SCC 407"** as well as judgment of Hon'ble Supreme Court in **"Sesh Nath Singh & Anr. vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. & Anr.', 2021 SCC OnLine SC 244"** has neither any applicability in the facts of the present case nor can give any assistance to the Appellant.

30. Learned counsel for the Appellant relied on the judgment of Hon'ble Supreme Court in **"B. K. Educational Services Pvt. Ltd. vs. Parag Gupta & Associates, AIR 2018 SC 5601"** for preposition that right to sue accrues when a default occurs. There cannot be any dispute to the preposition laid down by the Hon'ble Supreme Court but in the present case question which is to be considered is as to what is the threshold to be fulfilled by an Operational Creditor when an application for initiation of CIRP has been filed. When Section 4 is applied to initiation of CIRP process, threshold should not be looked into when a right to sue accrues rather threshold be looked into on the date of initiation. Default by Corporate Debtor is a condition precedent which gives right to the Operational Creditor to file application under Section 9 but for initiating CIRP process threshold, as prescribed under Section 4, is to be fulfilled by the Operational Creditor on the date of initiation of CIRP process.

31. In view of the foregoing discussion, we are satisfied that no error has been committed by the Adjudicating Authority in rejecting Section 9 application filed by the Appellant on 18.01.2021 which did not fulfil the threshold of Rupees One Crore. We do not find any merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Justice M. Satyanarayana Murthy]  
Member (Judicial)**

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

**NEW DELHI**

**20<sup>th</sup> September, 2022**

*Archana*