

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

Company Appeal (AT) (Insolvency) No. 963 of 2021

IN THE MATTER OF:

Axis Bank Ltd.

...Appellant

Versus

Maharashtra Theatres Pvt. Ltd.

...Respondent

Present:

For Appellant: Mr. Arjun Krishnan, Mr. Kaustav Som, Ms. Khushboo Mittal and Ms. Savani Gupte, Advocates.

For Respondent: Mr. Abhijeet Sinha, Mr. Kumar Anurag Singh, Ms. Aastha Shrestha, Mr. Zain A. Khan and Mr. Aniruth Purusothaman, Advocates.

**ORDER
(Virtual Mode)**

02.03.2022: Heard learned counsel for the Appellant and learned counsel appearing for the Respondent. This Appeal has been filed against order dated 08.10.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Court No. V, Mumbai Bench in C.P. No. 115/(IB)-MB-V/2021. The Appellant – Financial Creditor has filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 for claiming the dues of Rs.55,75,27,571/- including interest. The Application was filed on 30.12.2020. The Adjudicating Authority issued notice on the application. Reply was filed by the Corporate Debtor. The Corporate Debtor in its Reply has relied on Section 10A of the Code and submitted that since date of default is 31.10.2020, no application for initiation of insolvency resolution process could have been filed for any default on or after 25.03.2020. The Adjudicating

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Authority after hearing the parties came to the conclusion that date of default in Form-1 is 31.10.2020, hence, the application is barred by Section 10A. On the aforesaid ground, the Adjudicating Authority has rejected the Application.

2. Learned counsel for the Appellant challenging the decision of the Adjudicating Authority contends that in his application filed under Section 7 on 30.12.2020 he has clearly mentioned that the date of default is 29.01.2019, which was the date when account of the Corporate Debtor was declared NPA. It is submitted that the Adjudicating Authority wrongly assumed 31.10.2020 as the date when default was claimed. Learned counsel for the Appellant referred to application under Section 7 which has been brought on record at page 254 of the paper book.

3. Shri Abhijeet Sinha, learned counsel for the Respondent submits that even if the submission of learned counsel for the Appellant is accepted that the application was not barred by Section 10A, the matter needs to be remitted back to the Adjudicating Authority to consider the matter afresh after hearing the parties.

4. We have heard learned counsel for the parties and perused the record. We are of the view that error has been committed by the Adjudicating Authority in noticing the date of default. From the application filed before the Adjudicating Authority, the date of default has been mentioned. Para 6 of the synopsis indicates that the date of default is 29.01.2019 and 31.10.2010 was

the date on which total amount was due and which is mentioned in Part IV Item 2 of the Application. The Part IV Item 2 is to the following effect:

2.	<i>AMOUNT CLAIMED TO BE IN DEFAULT THE DATE ON WHICH THE DEFAULT OCCURRED</i>	<i>The total amount due and claimed as on 31/10/2020 is Rs.55,75,27,571/- (Rupees Fifty Five Crore Seventy Five Lakh Twenty Seven Thousand Five Hundred Seventy One only), which includes unapplied interest and penal interest for default in payment. A break-up of the amount due as on 31/10/2020 has been explained in the document annexed herewith as Annexure 4.</i>
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5. When the Application under Section 7 is read in whole it is clear that date of default was never claimed as 31.10.2020. The Adjudicating Authority committed error is taking 31.10.2020 as the date of default and hence coming to the wrong conclusion that the application is barred by Section 10A. We, thus, are satisfied that Application was not barred by Section 10A. Further, from the list of documents which was filed by the Applicant, the credit facility recall notice dated 11.07.2019 is mentioned and brought on the record and other notices have also been referred to which clearly indicate that 31.10.2020 was not date of default.

6. In view of the aforesaid, the order dated 08.10.2021 is set aside. We remit back the matter to the Adjudicating Authority to pass fresh order on Section 7 Application after hearing the parties. Appeal is allowed accordingly.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

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