NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1931 of 2024

[Arising out of order dated 26.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court – III), in C.P. (IB)-881(MB)/C-III/2023]

IN THE MATTER OF:

JUBIN KISHORE THAKKAR,
MEMBER OF THE SUSPENDED BOARD OF DIRECTORS OF KLT AUTOMOTIVE & TUBULAR PRODUCTS LIMITED
HAVING HIS ADDRESS AT: 143, 144, 145, 14th FLOOR, VASUKAMAL CHS, DEVIDAS LANE, BORIVALI (WEST), MUMBAI – 400103 **...Appellant**

Versus

1. PHOENIX ARC PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT:
3RD FLOOR, WALLACE TOWERS,
139-140/B/1, CROSSING OF SAHAR ROAD AND WESTERN EXPRESS HIGHWAY,
VILE PARLE EAST, VILEPARLE (EAST),
MUMBAI, MAHARSHTRA, 400057.
EMAIL: compliance@phoenixarc.co.in **...Respondent No. 1**

2. MR. ASHUTOSH AGARWALA
INTERIM RESOLUTION PROFESSIONAL OF KLT AUTOMOTIVE & TUBULAR PRODUCTS LIMITED
HAVING OFFICE AT: D-1005, ASHOK TOWERS,
DR. S.S. ROAD, PAREL,
MUMBAI, MAHARASHTRA - 400012
EMAIL: gantrip@gmail.com **...Respondent No. 2**

Present:

For Appellant : **Mr. Krishnendu Dutta & Mr. Abhijeet Sinha, Sr. Advocate with Mr. Abhirup Dasgupa, Ms. Jayashree Shukla Dasgupta and Mr. Rohan Aggarwal, Advocates.**

For Respondents : **Mr. Amar Dave, Sr. Advocate with Ms. Bhavana Duhoon, Mr. Abhinav Agarwal, Mr. Manaswi Agarwal and Ms. Saloni Kalwade, Advocates for R-1.**

Mr. Pulkit Dutt Tiwari and Shreeya Pednekar, Advocates for R-2/IRP.

O R D E R

ASHOK BHUSHAN, J.

This Appeal by a Suspended Director of the Corporate Debtor, KLT Automotive and Tabular Products Limited has been filed challenging the Order dated 26.09.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court – III), by which Order, Application under Section 7 filed by the Financial Creditor, Respondent herein has been admitted.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

i. Corporate Debtor, KLT Automotive and Tabular Products Limited availed various credit facilities from Bank of India between 2005–11. In 2011, Corporate Debtor availed financial facility from Corporation Bank (now Union Bank of India) which included working capital facilities, comprising of fund based limit and non-fund based limit aggregating to a sum of ₹61 Crores.

ii. On 24.08.2012, Corporate Debtor, availed additional credit facility from Bank of India to the tune of ₹126 Crores.

iii. Account of Corporate Debtor was declared as NPA by Bank of India on 31.03.2015.

iv. On 28.09.2015, a Facility Agreement was executed between the Corporate Debtor and KKR Financial Services Limited for availing Term Loan Facility of INR 195 Crores.

v. On 31.03.2016, Corporate Debtor issued acknowledgement of debt to Bank of India.

vi. Corporation Bank (now Union Bank of India) declared the account of Corporate Debtor as NPA on 21.12.2017.

vii. KKR Financial Services Limited also declared the account of Corporate Debtor as NPA on 29.06.2018.

viii. On 24.01.2019, Bank of India assigned its debt to Respondent No. 1.

ix. The Financial Creditor, KKR Financial Services Limited also assigned its debt to Bank of India.

x. On 13.03.2019, Corporation Bank also assigned the loan facility granted to it by Corporate Debtor in favour of Respondent No. 1.

xi. On 26.04.2019, Financial Creditor agreed to settle and restructure the dues of the Corporate Debtor in Terms of the Letter of Acceptance (LoA).

xii. On 20.03.2023, Respondent No. 1 revoked all the waivers/concessions under the LoA issued in respect of loan facility granted by Bank of India, Corporation Bank, as well as KKR Financial Services Limited.

xiii. On 15.09.2020, Respondent No. 1 by a separate three Notices recalled the loan facilities granted by Bank of India, KKR Financial Services Limited and Corporation Bank.

xiv. In the year 2021, Respondent No. 1 filed OA No. 201/2021 before the Debt Recovery Tribunal (DRT) for recovery of outstanding dues from the Corporate Debtor.

xv. A Company Petition 1207/2021 was also filed before the Adjudicating Authority by the Financial Creditor on 16.10.2021.

xvi. On 29.08.2022, Financial Creditor and Corporate Debtor arrived at amicable settlement and executed Consent Terms before the DRT.

xvii. DRT by Decree issued a Consent Decree on 29.08.2022.

xviii. On 10.10.2022, Adjudicating Authority disposed of the Company Petition 1207/2021 in accordance with the Consent Terms.

xix. There being breach of Consent Terms by the Corporate Debtor, Financial Creditor filed Section 7 Application being C.P. (IB) No. 881(MB)/C–III/2023, seeking initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, claiming default of total amount of ₹968,20,63,285/– only as on May 15, 2023.

xx. In Section 7 Application, Notices were issued and Corporate Debtor filed its Reply to Section 7 Application.

xxi. Adjudicating Authority after hearing both the parties held that Corporate Debtor committed default which is due to the Corporate Debtor in the Order impugned finding has been returned that Corporate Debtor has proved existence of debt and default, which is excess of ₹1 Crore, hence, Corporate Debtor was admitted to Insolvency by the Order dated 26.09.2024.

xxii. This Appeal has been filed challenging the Order dated 26.09.2024.

3. We have heard Learned Sr. Counsels, Mr. Krishnendu Datta and Mr. Abhijeet Sinha appearing for the Appellants and Learned Sr. Counsel, Mr. Amar Dave appearing for the Respondent.

4. Learned Counsel for the Appellant challenging the Order of the Adjudicating Authority submits that admittedly, the loan facilities were recalled by the Respondent No. 1 vide notice dated 15.09.2020, which was during 10A period. The OA No. 201/2021 was filed by the Respondent No. 1 before the DRT on account of default committed by the Corporate Debtor in which Consent Decree passed on 29.08.2022. It is contended that Consent Decree having been passed on 29.08.2022, which was based on default committed by the Corporate Debtor during the 10A period, the Application filed by the Financial Creditor on 03.06.2023, under Section 7 is barred by Section 10A. The default which has been committed by the Corporate Debtor under 10A period cannot be cured on the strength of Consent Decree dated 29.08.2022 obtained from DRT. The nature of default is the same, hence Application filed on 03.06.2023 is barred by 10A and Adjudicating Authority committed error in admitting Section 7 Application. It is submitted that Adjudicating Authority committed error in not accepting the submission of the Corporate Debtor that default falls under 10A period.

5. Learned Counsel for the Respondent refuting the submissions of the Counsel for the Appellant submits that the default has been committed by Appellant even prior to 10A period. The Corporate Debtor granted restructuring facility on 26.04.2019 which was not honoured by Corporate Debtor and all waivers and concessions were revoked on 20.03.2020 by the

Financial Creditor. It is further submitted that Section 7 Application was filed by the Financial Creditor in 2021. A Consent Terms was filed before the DRT by the Parties, on basis of which Consent Decree was issued on 29.08.2022 by the DRT under the Consent Term, Corporate Debtor agreed to make repayment of amount in which the Corporate Debtor failed. In Section 7 Application filed by Financial Creditor, date of default was mentioned as 29.08.2022, which was a date of Consent Decree which was not honoured by the Corporate Debtor, which default admittedly was beyond 10A period Application under Section 7 cannot be held to be barred by 10A. It is submitted that initiation of Section 7 Application was based on default, on basis of Consent Decree 29.08.2022. It is submitted that default has been committed by the Corporate Debtor also before 10A period. Accounts were declared NPA by the Lenders in 2017 & 2018, hence, the default was clearly also before the 10A period.

6. We have considered the submissions of Counsel for the Parties and perused the record.

7. A copy of the Section 7 Application has been brought on the record by Appellant as Annexure 19 to the Appeal. Part IV, Column 2 of `Form-1', which mentions the date of default is as follows:

"PART – IV

PARTICULARS OF FINANCIAL DEBT		
2.	*AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE*	***Outstanding Amount as on May 15, 2023.*** *Rs. 968,20,63,285 (Rupees Nine Hundred Sixty Eight Crores Twenty Lakhs Sixty Three Thousand Two Hundred Eighty Five Only)*

	WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	***Date of Default –*** *Recovery Certificate No. 53 of 2022 was issued on August 29, 2022. The Petitioner submits that issuance of the Recovery Certificate constitutes a fresh cause of action to file an Application under Section 7 of the IBC. Thus, the date of default in the present matter is August 29, 2022. Though the Corporate Debtor had agreed to amicably restructure the outstanding dues under a letter dated March 1, 2023, the Corporate Debtor defaulted on the same. Therefore, the Corporate Debtor continues to remain liable to pay the aforesaid amounts as per the Recovery Certificate No. 53 of 2023 (after adjusting the amounts paid after issuance of the said recovery certificate).* *The Petitioner submits that the date of default in respect of BOI Dues, KKR Dues, RSF Dues and CB Dues are set forth as above. The Petitioner submits that the Corporate Debtor has admitted to the debt as well as default in respect of the BOI Dues, KKR Dues, RSF Dues and CB Dues time and again, as detailed above."*

8. Application under Section 7 was thus based on default, which was based on the Consent Decree dated 29.08.2022, which obviously is subsequent to the 10A period.

9. We have already noticed that an Application under Section 7 was earlier filed by the Financial Creditor against the Corporate Debtor on 16.10.2021, which Section 7 Application was disposed of in terms of the Consent Term dated 29.06.2022. The submission which was raised before the Adjudicating Authority with regard to bar under 10A was noted and rejected by the Adjudicating Authority. It is useful to extract Paragraphs 32 to 35 of the Impugned Order, which is as follows:

> *"32. Accordingly, we find that the petitioner has not only annexed the Record of Default issued by NeSL clearly showing the debt and default but has also annexed the order dated 29.08.2022 passed by DRT and Recovery Certificate dated 29.08.2022 as an evidence of debt and default.*
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> *33. The landmark judgment of the **Hon'ble Supreme Court in Dena Bank Vs. C. Shivakumar Reddy and Ors. (2021) 10 SCC 330** it was held that Section 7 of the Petition can be initiated on the basis of the Recovery Certificate obtained by the DRT. Relevant paragraphs of the judgment are produced:-*
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> > *"130. We see no reason why the principles should not apply to an application under Section 7 of the IBC which enables financial creditor to file an application initiating the Corporate Insolvency Resolution Process against the Corporate Debtor before the Adjudicating Authority, when a default has occurred. As observed earlier in this judgment, on a conjoint reading of the provisions of the IBC quoted above, it is clear that a final judgment and/or decree of any Court or Tribunal or any Arbitral Award for payment of money, if not satisfied, would fall within the ambit of a financial debt, enabling the creditor to initiate proceedings under Section 7 of the IBC."*
> >
> > **********
> >
> > *"136. A final judgement and order/ decree is binding on the judgement debtor. Once a claim fructifies into a final judgement and order/ decree, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to*

the creditor to recover the amount of the final judgment and/or order/decree and/or the amount specified in the Recovery Certificate.

137. The Appellant Bank was thus entitled to initiate proceedings under Section 7 of the IBC within three years from the date of issuance of the Recovery Certificate."

34. The relevant excerpt of the Recovery Certificate dated 29.08.2022 reads as follows:-

"In terms of final order dated 29th August, 2022 passed by this Tribunal in the above mentioned case, it is ordered that the Applicant Certificate Holder Bank is entitled to recover a sum of Rs.664,72,53,586.17/- together with further interest from 01.02.2021.

a. At the rate of 15.45% at monthly rests and penal interest at the rate of 2% p.a. on a sum of Rs.265,66,94,089.18/- until payment and/or realization; and

b. At the rate of 17% at monthly rests and penal interest at the rate of 2% p.a. on a sum of Rs. 269,94,12,458.51/- until payment and/or realization; and

c. At the rate of 18% at monthly rests and penal interest at the rate of 2% p.a., on a sum of Rs. 36,53,33,398/-until payment and/or realization; and

d. At the rate of 14.30% at monthly rests and penal interest at the rate of 2% p.a. on a sum, of Rs. 27,92,24,323.08/- until payment and/or realization and at the rate of 15.25% at monthly rests and penal interest at the rate of 2% p.a. on a sum of Rs. 64,65,89,317.40/- until payment and/or realization in full from the Certificate Debtor No. 1,2(i) to (iii), 3 to 5 hereinafter referred to as: -

35. The Corporate debtor also contended that the present petition falls under Section 10A period as the date of default arises after failing to make payment in pursuance of Recall Notice dated 15.09.2020, In view of the order of DRT and the Recovery Certificate, we are of the considered view that default does not fall under section 10A period."

10. The Consent Term which was executed between the Parties contained an acknowledgement of debt. Paragraphs 3 to 5 of the Consent Terms are as follows:

> *"3. Agreed, declared and confirmed that an aggregate sum of Rs.664,72,53,586.17 (Rupees Six Hundred Sixty Pour Crores Seventy Two Lacs Fifty Three Thousand Five Hundred Eighty Six and Seventeen Paise Only) as on January 31, 2021 alongwith further interest thereon was due and payable by the Corporate Debtor and personal guarantors and corporate guarantors (hereinafter referred to as* ***"Debt Claim"****) comprising of the following:*
>
> *(i) A sum of Rs.265,66,94,089.18 (Rupees Two Hundred and Sixty Five Crores Sixty Six Lakhs Ninety Four Thousand and Eighty Nine and Paise Eighteen Only), with further interest thereon at the rate of 15.45% pa at monthly rests and penal interest at the rate of 2% p.a., from February 1, 2021 till the payment and/or realization in respect of debt assigned by BOI (****"BOI Assigned Dues"****); and*
>
> *(ii) A sum of Rs. 269,94,12,458.51 (Rupees Two Hundred and Sixty Nine Crores Ninety Four Lakhs Twelve Thousand Four Hundred and Fifty Eight and Paise Fifty One Only), with further interest thereon at the rate of 17% p.a. at monthly rests and penal interest at the rate of 2% p.a., from February 1, 2021 till the payment and/ or realization in respect of the debt assigned by KKR (****"KKR Assigned Dues"****); and*
>
> *(iii) A sum of Rs.36,53,33,398/- (Rupees Thirty Six Crores Fifty Three Lakhs Thirty Three Thousand Three Hundred and Ninety Eight Only), with further interest thereon at the rate of 18% p.a. at monthly rests and penal interest at the rate of 2% p.m., from 01.02.2021 till the payment and/or realization in respect of the RSF Facility (****"RSP Dues"****); and*
>
> *(iv) A sum of Ro.92,58, 13,640.48 (Rupees Ninety Two Crores Fifty Eight Lakhs Thirteen Thousand Six Hundred and Forty and Paise Forty Eight Only), with further interest thereon from February 1, 2021 till the date of payment and/or realization, calculated at the rate of (i) 14.30% p.a. at monthly rests and penal interest at the rate of 2% p.a., on Rs.27,92,24,323.08 (Rupees Twenty Seven Crores Ninety Two Lakhs Twenty Four Thousand Three Hundred and Twenty*

*Three and Fight Paise Only) in respect of the Cash Credit Facility; and (ii) 15.25% p.a. at monthly rests and penal interest at the rate of 2% p.a., on Rs. 64,65,89,317.40 (Rupees Sixty Four Crores Sixty Five Lakhs Eighty Nine Thousand Three Hundred and Seventeen and Forty Paise Only) in respect of all the other facilities, in respect of the debt assigned by CB (**"CB Assigned Dues"**).*

*4. The parties hereto agree, admit, confirm and declare that the parties have arrived at an amicable settlement of the Debt Claim. Accordingly, the parties hereto (alongwith various other stakeholders) have duly executed and filed Consent Terms dated August 29, 2022 in Original Application No. 201 of 2021 before the Debts Recovery Tribunal - I, Mumbai (**DRT Consent Terms**). A copy of the DRT Consent Terms is hereto annexed as **Annexure A.***

5. The parties hereto agree, admit, confirm and declare that the parties are bound by the DRT Consent Terms."

11. In Paragraph 7 of the Consent Terms, the Corporate Debtor provided for repayment schedule towards full and final settlement of the dues. Paragraph 9 of the Consent Term clearly provided that Parties agreed that Section 7 Application which was filed in the Year 2021 and pending shall be disposed of with liberty to Financial Creditor to file a fresh Section 7 Application. Paragraphs 9 and 10 of the Consent Terms are as follows:

"9. In view of the above, the parties hereto agree that the present Company Petition be disposed off in accordance with the DRT Consent Terms and grant liberty to the Petitioner to file a fresh Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, in case the Corporate Debtor defaults in any of the obligations contained in the DRT Consent Terms.

10. The Corporate Debtor hereby agrees, confirms and declares that in case there is any default in fulfilling any of the obligations of the Corporate Debtor contained in the DRT Consent Terms and the Petitioner files a fresh petition under Section 7 of the IBC, the Corporate Debtor shall not raise any objection and the petition under Section 7 of the IBC shall be liable to be admitted by this Hon'ble Tribunal forthwith."

12. On basis of Consent Terms dated 29.08.2022, Consent Decree was also passed by the DRT on 29.08.2022, and the Recovery Certificate was issued by the DRT. From the pleadings of Section 7 Application which is part of the record, the Section 7 Application is founded on the default on the basis of Consent Term dated 29.08.2022, which date obviously is subsequent to 10A period.

13. Learned Counsel for the Appellant submits that nature of the default which has been committed by the Corporate Debtor during Consent Period with regard to which Notice of recall was issued on 15.09.2020 by the Financial Creditor during the Consent Period, the nature of default shall not be changed and default which was committed during 10A period cannot be treated to be any different default, hence 10A prohibited the Financial Creditor to file any Section 7 Application even thereafter.

14. While noticing the facts and the sequence of the case, we have already noticed that default was committed by the Corporate Debtor on 21.12.2017 & 29.06.2018, when accounts of the Corporate Debtor was declared by Lenders as NPA. Assignment was made in favour of the Financial Creditor in the Year 2019. Financial Creditor agreed to settle and restructure the dues of the Corporate Debtor on 26.04.2019, which was also not honoured and, hence the default was also committed prior to 10A period.

15. In any view of the matter, Section 7 Application having been founded on the basis of default committed after Consent Decree dated 29.08.2022 was passed, Default cannot be pegged on 10A period when Application under Section 7 is founded on the basis of Consent Decree dated 29.08.2022.

16. We have already extracted Part IV, Column 2 of the Section 7 Application, which clearly mention that default has been committed on 29.08.2022. The NeSL Certificate which was also attached along with the Section 7 Application, record of default with the information utility was attached with Section 7 Application, which is clear from Part V Item No. 3. Adjudicating Authority in the Impugned Order has also noted the default as reflected in NeSL Certificate.

17. Learned Counsel for the Appellant in support of his submission that Application under Section 7 is barred by 10A period has relied on certain Judgments of the Hon'ble Supreme Court and this Tribunal which also need to be noticed. Learned Counsel for the Appellant has relied on the Judgment of the Hon'ble Supreme Court in the matter of ***`Vishal Chelani & Ors.' Vs. `Debashis Nanda'*** reported in ***(2023) 10 SCC 395.*** In the above case, Hon'ble Supreme Court was considering the decision of the NCLAT which held that benefit of decree under Uttar Pradesh Real Estate Regulatory Authority has to be treated differently from other Homebuyers Allottee. In the above case, the Homebuyers who had obtained decree from UP RERA were not treated similarly to other Homebuyers who were accepted to the Allottees. The facts of the case have been noticed in Paragraphs 2 to 4, which are as follows:

> *"2. The brief facts are that the appellants are homebuyers, who had opted for allotment in a real estate project of the respondent company (hereinafter referred to as "Bulland Buildtech Pvt. Ltd." or "the respondent"). Aggrieved by the delay in the completion of the project, the appellants approached the Uprera which by its orders upheld this entitlement to refund amounts deposited by them, together with interest. In the meantime, proceedings under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") were initiated.*

3. In the course of proceedings after due consultations by the Committee of Creditors, a resolution plan was presented to the adjudicating authority. In that plan, a distinction was made between homebuyers, who had opted or elected for other remedies such as i.e. applying before RERA and having secured orders in their favour, and those who did not do so. Homebuyers who did not approach authorities under the RERA Act were given the benefit of 50% better terms than that given to those who approached RERA or who were decree-holders.

4. The appellants felt aggrieved; their applications were rejected by the adjudicating authority. Their appeals too were unsuccessful. Consequently, they have approached this Court."

18. In the above case, Hon'ble Supreme Court laid down following in Paragraph 12:

"12. As held in Natwar Agrawal v. Ssakash Developers & Builders (P) Ltd., 2023 SCC OnLine NCLT 682 by the Mumbai Bench of National Company Law Tribunal the underlying claim of an aggrieved party is crystallised in the form of a court order or decree. That does not alter or disturb the status of the party concerned — in the present case of allottees as financial creditors. Furthermore, Section 238 IBC contains a non obstante clause which gives overriding effect to its provisions. Consequently its provisions acquire primacy, and cannot be read as subordinate to the RERA Act. In any case, the distinction made by the RP is artificial; it amounts to "hyper-classification" and falls afoul of Article 14. Such an interpretation cannot therefore, be countenanced."

19. The above Judgment was considering the status of Homebuyers and it held that those Allottees who had obtained decree from RERA are also Allottees and their nature of debt i.e., Financial Debt shall not be changed merely because of decree obtained by RERA. The above Judgment is clearly distinguishable and has no applicability in the facts of the present case.

20. Learned Counsel for the Appellant has also relied on the Judgment of this Tribunal in the matter of ***`Manish Kumar Singh' Vs. `State Bank of***

India & Ors.' reported in ***2024 SCC OnLine NCLAT 614*** which was a case where Section 7 Application was admitted, which Order was challenged by a Suspended Director of the Corporate Debtor. In the above case, bar of Section 10A was also pressed in service by the Suspended Director of the Corporate Debtor. In the above case also decree by the DRT could be passed on 26.04.2022. The argument that Application is barred by 10A was rejected by this Tribunal and in Paragraph 19 following has been laid down:

> ***"19.*** *As observed above, there are two reasons for not accepting the submissions of the appellant that the application under section 7 was bared by section 10A. Firstly, the default was committed by the corporate debtor prior to section 10A period with effect from August 8, 2018, which was date of default mentioned in section 7 application. When section 7 application mentions date of default which default was committed prior to section 10A period, application under section 7 cannot be held to be barred by section 10A. Further, although one-time settlement was communicated by the bank by letter dated September 5, 2020 but the one-time settlement itself contemplates that parties shall jointly file an application before the Debts Recovery Tribunal where original application filed by the bank was pending and obtain the consent decree. Joint application could be filed on June 25, 2021 and consent decree could be passed on April 26, 2022 by the Debts Recovery Tribunal. As noted above, an undertaking was given by the corporate debtor on May 11, 2021, which undertaking has been brought on record by the appellant as annexure 37 to the appeal. The undertaking admittedly was issued on May 11, 2021. When the joint application was filed subsequent to section 10A period and consent decree was obtained only on April 26, 2022, we are unable to accept the submission of the appellant that application under section 7 was barred by section 10A."*

21. In the above case, also the Application was filed under Section 7 on 13.03.2023. In Paragraph 22 of the Judgment following was held:

> ***"22.*** *Coming to the submission of the appellant that section 7 application which was filed by the bank was barred by time. It is relevant to notice that the date of*

default was mentioned as August 8, 2018 and one-time settlement proposals were given by the corporate debtor on March 11, 2020 and May 5, 2020. The application under section 7 was filed by the bank on March 13, 2023, i.e., well within three years from submission of the one-time settlement proposal. The one-time settlement proposal submitted by the corporate debtor was clearly an acknowledgment of debt and the benefit of section 18 of the Limitation Act, shall be available to the financial creditor. Further, admittedly consent decree was passed by the Debts Recovery Tribunal on April 26, 2022 and from the date of decree of the Debts Recovery Tribunal, there shall be further period of three years for filing application which has been held by the hon'ble Supreme Court in Kotak Mahindra Bank Ltd. v. A. Balakrishnan [(2022) 19 Comp Cas-OL 230 (SC); (2022) 9 SCC 186; (2022) 4 SCC (Civ) 548.] ."

22. The above Judgment in no manner supports the submission of the Appellant rather clearly reject the argument of Section 10A which was relying on Settlement Letter dated 05.09.2020.

23. Another Judgment which has been relied by the Counsel for the Appellant is in the matter of ***`Samrat Restaurant' Vs. `Brewcrafts Micro Brewing Pvt. Ltd.'*** in ***Comp. App. (AT) Ins. No. 1409/2024 & I.A. No. 5117 of 2024,*** where this Tribunal had occasion to consider the argument on 10A. In the above case, Section 9 Application filed by the Appellant was dismissed, it was held that portion of a debt claimed by the Appellant fell within period protected under Section 10A and a remaining debt did not fulfil mandatory threshold of ₹1 Crore. The above findings have been returned by this Tribunal in Paragraph 44, which is as follows:

"44. In nutshell, this Appeal arises from the Order of the National Company Law Tribunal (NCLT), dated May 22, 2024, dismissing the Appellant's Application under Section 9 of the Insolvency and Bankruptcy Code (IBC), 2016. The Appellant had sought to initiate the Corporate Insolvency Resolution Process (CIRP) against the Respondent (Corporate Debtor). The NCLT

held that a portion of the debt claimed by the Appellant fell within the period protected by Section 10A of the IBC and that the remaining debt did not meet the mandatory threshold of Rs 1 crore for initiating CIRP. This Appeal challenges the findings of the NCLT and seeks to admit the Corporate Debtor into CIRP."

24. In the facts of the above case, following observations were made in Paragraph 56. The observations of this Tribunal in Paragraph 56 is as follows:

"56. We have gone through these letters from @ 96-99 APB and we do not find them to be one-time settlement arrangements by any stretch of the imagination. It has been held in SLB Welfare Assn. (supra) that the date of default and acknowledgment are two different events. The date of default is not dependent on the date of acknowledgement. The Appellant has relied upon the purported OTS letters dated 29.08.2021 and 10.03.2023, which attempt to change the date of default. In fact, the repayment is governed by L&L agreement. OTS agreements and rent reductions due to Covid, only reflect a temporary modification of payment terms, but they do not extinguish the original default that occurred during the Section 10A period. The purpose of Section 10A was to prevent companies from being pushed into insolvency due to temporary financial distress caused by the COVID-19 pandemic. The Appellant's interpretation that subsequent agreements should nullify the protection offered by Section 10A would undermine the legislative intent and open the door for Creditors to circumvent the protections offered by law. The Tribunal cannot accept an interpretation that erodes the protection that Section 10A was specifically designed to offer. The argument of the Appellant that if a default is committed prior to the Section 10A period and continues into the Section 10A period, the initiation of proceedings is not barred and is applicable in the instant case. But the facts of the case as discussed in the case speak otherwise. This is a gross misrepresentation of the facts."

25. Observation of this Tribunal in Paragraph 56 were made in context of facts of the said case where Appellant has relied on OTS Letter dated 29.08.2021 & 10.03.2023, which attempted to change the date of default. The observation made by this Tribunal in the above case was in facts of the said case and has no bearing in the fact of the present case where a Consent

Decree was passed by the DRT. It is not the case of the Appellant that no default was committed by the Corporate Debtor in terms of the Consent Decree dated 29.08.2022.

26. We, thus are satisfied that the Adjudicating Authority did not commit any error in admitting Section 7 Application filed by the Financial Creditor. The Section 7 Application was in no manner hit by Section 10A of the IBC.

There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

6th November, 2024

himanshu