

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

Company Appeal (AT) (Insolvency) No. 818 of 2022

IN THE MATTER OF:

ADA Restaurant and Foods Pvt. Ltd.

...Appellant

Versus

...Respondents

Present:

**For Appellant: Mr. Anurag Bhatt, Mr. Bilal Ali, Mr. Lokesh Pathak
 and Mr. Vaibhav Vijayvargiya, Advocates.**

For Respondents:

ORDER

12.09.2022: Heard learned counsel for the Appellant. This Appeal has been filed against the order passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-V dated 05.04.2022 by which application filed by the Appellant under Section 10 has been dismissed on the ground that it is barred by Section 10A of the I&B Code.

2. Learned counsel for the Appellant submits that the default was committed prior to enforcement of Section 10A i.e. prior to 25.03.2020, hence the application was not hit by Section 10A. The application under Section 10 has been brought on the record as Annexure A-6. In the Column '*Date when the financial/operational debt was incurred*', following has been stated:

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“DATE WHEN THE FINANCIAL/OPERATIONAL DEBT WAS INCURRED.

The Debt in default was incurred by the Corporate Applicant on account basis and is continuing since, March, 2019. It is pertinent to mention that the cumulative amount of debt and its default is more than one crore rupees which is as per the minimum threshold for initiating the Corporate Insolvency Resolution Process of the Corporate Applicant and an amount of Rs.1,42,52,186/- has become due and payable on February 2020, the said amount is continuing on day to day basis. A copy of the certificate of Chartered Accountant Anirudh Abhiyankar certifying the amount of debt as well as the date when the amount is due and payable is annexed as Annexure A-5.

It is submitted that the Corporate Applicant defaulted in making payment of its debt for an amount of Rs.1,42,52,186, which was due and payable on February 2020 and the said default is occurring on days to day basis. It is pertinent to mention that as per the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 dated 5.6.2020, if the default to the extent of Rs.1,00,00,000/- has occurred prior to 25.3.2020, then in that case an Application for initiation of Corporate Insolvency Resolution Process can be initiated by the Corporate Applicant. In view of the same it is submitted that the present Application for initiation of Corporate Insolvency Resolution Process can be initiated by the Corporate

Applicant. In view of the same it is submitted that the present Application is maintainable and bound to succeed.”

3. The case set up by the Appellant in the application under Section 10 was that the debt became due and payable in February, 2020, thus, default was prior to 25.03.2020 and the application filed under Section 10 cannot be held to be barred by Section 10A. We, thus, set aside the order of the Adjudicating Authority dated 05.04.2022 and revive the application of the Appellant under Section 10 in Company Petition IB9962/ND/2020 which may be considered afresh by the Adjudicating Authority and decided in accordance with law.

4. We make it clear that we have not expressed any opinion on the merits of the application under Section 10. It is for the Adjudicating Authority to consider the application afresh and pass appropriate order in accordance with law. With aforesaid observations, Appeal is allowed.

**[Justice Ashok Bhushan]
Chairperson**

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

Archana/nn