

NITIN CHANDRAKANT DESAI V. EDELWEISS ASSET RECONSTRUCTION LTD. & ANR.

Nitin Chandrakant Desai

...Appellant

Versus

Edelweiss Asset Reconstruction Ltd. & Anr.

...Respondents

Case No: Company Appeal (AT) (Insolvency) No. 1022 of 2023

Date of Judgement: 01.08.2023

Judges:

[Justice Ashok Bhushan]

Chairperson

[Mr. Barun Mitra]

Member (Technical)

For Appellant: Advocate Anju Jain, Advocate Hitesh Sachar

For Respondent: Advocate R.P. Agrawal, Advocate Vidhisha Haritwal, For R-1

Facts:

Financial Creditor (Respondent) filed a Section 7 application for initiating corporate insolvency resolution process (CIRP) against the Corporate Debtor (Appellant). The application was filed based on a default in loan repayment recorded on 31.01.2020 as per the certificate from National E-Governance Services Ltd (NESL). Appellant contested that the application was barred by Section 10A of IBC since there was restructuring of debt allowed on 17.08.2020 which indicated default during

10A period. NCLT admitted the Section 7 application through its order dated 25th July, 2023. Appellant has filed the present appeal against NCLT's order

Court's Opinions:

1. On limitation and Section 10A bar. The recorded date of default is 31.01.2020 which is prior to the 10A period (defaults between 25.03.2020 to 24.03.2021). Default committed prior to 10A period does not bar an application filed based on such default just because there were defaults during the 10A period as well. The Section 7 application gives the default date as 31.01.2020. Hence the application is within limitation

2. On restructuring and subsequent defaults. Restructuring permitted on 17.08.2020 does not by itself indicate default during 10A period. The Section 7 application gives details of default on 31.03.2019 for FY 2018-19, which is prior to 10A period. Hence, defaults during 10A period cannot bar application filed for earlier defaults

3. No error in NCLT's order. NCLT has rightly admitted the Section 7 application filed by the Financial Creditor. No merit in the present appeal

Sections & Laws Referred:

Insolvency and Bankruptcy Code, 2016

Section 7: Initiation of Corporate Insolvency Resolution Process (CIRP); Section 10A: Suspension of Initiation of CIRP for certain defaults during COVID period

No case laws were referred in the order.

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Court

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Full Text of Judgment:

Heard Learned Counsel for the Appellant. Learned Counsel for the Respondent is also present.

1. This Appeal has been filed against the Order dated 25th July, 2023 by which order the Adjudicating Authority has admitted Section 7 Application filed by the Respondent.

2. Learned Counsel for the Appellant submits the Application was barred by Section 10A which submission has wrongly been rejected.

4. We have considered the submissions and perused the record.

5. The Adjudicating Authority has considered the submission of Appellant and dealt with it in paragraph 8:

“The Financial Creditor has successfully proved the existence of “debt” and “default” through the record of default issued by the NESL apart from other security documents and loan documents. The date of default is mentioned as 31.01.2020 in the NESL Certificate in the record of default and the above Company Petition being filed on 26.07.2022 is well within limitation. Certainly the above date of default does not fall within 10A period and the argument of Corporate Debtor with regard to the default during 10A period needs to be rejected on merits. The Financial Creditor has also suggested the name of Mr. Jitender Kothari as proposed IRP to be appointed in this matter and thus the above Company Petition satisfies all the legal requirements for admission and this Bench did not find any valid reason to dismiss the same.”

6. The Adjudicating Authority has noticed and returned a finding that the default recorded in the NESL is 31.01.2020. The default on 31.01.2020 is obviously prior to the Section 10 A period. When default has been committed by the Corporate Debtor prior to Section 10A period, any default committed during the Section 10A period can not be held to bar the application which is filed on the basis of default prior to Section 10A and

subsequent to Section 10A period.

7. Learned Counsel for the Appellant submits that restructuring was also permitted on 17.08.2020. The restructuring itself indicated that there has been default subsequent to Section 10A period i.e. 31st March, 2021 which is mentioned in paragraph 7.8. The Application which has been filed under Section 7 gives the detail for Part-IV of the Application which part of the appeal itself indicate the date of default as 31.01.2020. Learned Counsel for the Appellant has referred to Page 83 and 84 of the Appeal Paper Book. At page 84, date of default due date has been mentioned as 31st March, 2019 for the financial year 2018-19. Reading of the Application indicates that default was committed by the Corporate Debtor prior to Section 10A period.

8. We are satisfied that no error has been committed by the Adjudicating Authority in admitting Section 7 Application. There is no merit in the Appeal, the Appeal is dismissed.