

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1725 of 2024
&
I.A. No. 6238, 6305 of 2024

IN THE MATTER OF:

Office Beanz Pvt. Ltd.

...Appellant

Versus

...Respondent

Present:

For Appellant : Mr. M. Datta, Mr. Aditya Guha and Mr. Anand Kumar
Soni, Advocates

For Respondent : None

O R D E R
(Hybrid Mode)

09.09.2024 Heard Learned Counsel for the Appellant.

This Appeal has been filed against the order dated 01.03.2024. An application under Section 10 was filed by the Appellant. The same has been dismissed on account of Bar of 10A. Learned Counsel for the Appellant challenging the order submits that the Bar of Section 10A only provides that during the continuance of the bar, no application can be filed. However, the debt still remains, and after the period is over the application can be filed. He has relied on the judgment of Hon'ble Supreme Court in ***Ramesh Kymal Vs. Siemens Gamesa Renewable Power Private Limited (2021) 3 SCC 224.***

We have considered submission of the Appellant and perused the record.

Section 10A provides 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 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified² 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.”

In the case, before the Hon’ble Supreme Court, application was filed on 11.05.2020 under Section 9 and the ordinance was promulgated by the president on 05.06.2020 and the submission advanced was that the said ordinance will not apply since the application was filed prior to that. The application under Section 9 was rejected by the Adjudicating Authority holding it barred by Section 10A. The Appeal was also dismissed against which the matter went to the Hon’ble Supreme Court. Learned Counsel for the Appellant has relied on para 29, 30 and 32 of the judgment, which are as follows:

“29. We have already clarified that the correct interpretation of Section 10A cannot be merely based on the language of the provision; rather it must take into account the object of the Ordinance and the extraordinary circumstances in which it was promulgated. It must be noted, however, that the retrospective bar on the filing of applications for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the corporate debtor or the right of creditors to recover it.

30. Section 10A does not contain any requirement that the Adjudicating Authority must launch into an enquiry into whether, and if so to what extent, the financial health of the corporate debtor was affected by the onset of the Covid-19

pandemic. Parliament has stepped in legislatively because of the widespread distress caused by an unheralded public health crisis. It was cognizant of the fact that resolution applicants may not come forth to take up the process of the resolution of insolvencies (this as we have seen was referred to in the recitals to the Ordinance), which would lead to instances of the corporate debtors going under liquidation and no longer remaining a going concern. This would go against the very object of the IBC, as has been noted by a two-Judge bench of this Court in its judgment in Swiss Ribbons (P) Ltd. v. Union of India".

32. Hence, the embargo contained in Section 10A must receive a purposive construction which will advance the object which was sought to be achieved by enacting the provision. We are therefore unable to accept the contention of the appellant."

The mere fact that the observation of the Hon'ble Supreme Court that debt owed by the Corporate Debtor is not extinguished is the law declared by the Hon'ble Supreme Court, but their being clear prohibition for filing an application under Section 7, 9 and 10, for default occurring in 10A period there is apparent case. The language of the statute provides that no application for initiation of Corporate Insolvency Resolution Process of a Corporate Debtor shall be filed for any default arising on or after 25.03.2020. The provision cannot be read to mean that after the period is over the application can be filed. If such interpretation is accepted, the whole purpose and object shall be defeated. The purpose and object of introduction of Section 10A was to give relief to the Corporate Debtor who committed default during

the period which is covered by Section 10A. The debt is not wiped out is only for the purpose that other proceedings are not prohibited, but Sections 7, 8 and 10 applications are clearly barred. No application can be filed, even after expiry of the period under Section 10A for the default which occurred during the 10A period.

The interpretation which is sought to be put by the Learned Counsel by the Appellant to judgment of Hon'ble Supreme Court is not correct. There is no merit in the Appeal.

Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

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