

Learning Curve-1044

May 16, 2024

Consent Decree passed by DRT for settlement between FC and CD does not affect the original date of default for the purpose of Section 10A of IBC.

CASE TITLE	Mr. Maneesh Kumar Singh Vs. State Bank of India & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No.1484 of 2023
DATE OF ORDER	May 13, 2024
COURT/ TRIBUNAL	NCLAT, New Delhi

BRIEF FACTS:

The CD failed to adhere to the terms of the OTS. The FC filed an application u/s 7 of the IBC. The AA after hearing both the parties admitted the application. Appellant/suspended director of the CD aggrieved by the admission order has filed an appeal. It is submitted that as per the OTS, payment default occurred on 04.03.2021 i.e., after six months, which was within section 10A period, hence, the application was liable to be rejected.

DECISION:

The Hon'ble NCLAT, New Delhi, held that,

“When Section 7 application mentions date of default which default was committed prior to 10A period, application under Section 7 cannot be held to be barred by Section 10A. Further, although OTS was communicated by the Bank by letter dated 05.09.2020 but the OTS itself contemplates that parties shall jointly file an application before the DRT where original application filed by the Bank was pending and obtain the Consent Decree...

When the Joint Application was filed subsequent to 10A period and Consent Decree was obtained only on 26.04.2022, we are unable to accept the submission of the Appellant that application under Section 7 was barred by 10A...

We, thus, are of the view that no grounds have been made out in this appeal to interfere with the impugned order admitting Section 7 application. There is no merit in the Appeal. Appeal is dismissed.”