

INSTITUTE OF INSOLVENCY PROFESSIONALS

A wholly owned subsidiary of ICSI and registered with IBBI

Learning Curve-493

February 10, 2021

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.

CASE TITLE	Ramesh Kymal vs. M/s Siemens Gamesa Renewable Power Pvt Ltd. ¹
CASE CITATION	Civil Appeal No. 4050 of 2020
DATE OF ORDER	09.02.2021
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	<i>Sardar Inder Singh vs State of Rajasthan</i> <i>Swiss Ribbons (P) Ltd. v. Union of India</i>
SECTION/REGULATION REFERRED	Section 10A of IBC

Brief of the case:

An appeal was filed against the order of NCLAT whereby NCLAT affirmed the decision of the NCLT holding that in view of the provisions of Section 10A with retrospective effect from 5 June 2020, the application filed by the appellant as an operational creditor under Section 9 was not maintainable.

The issue which falls for determination in this appeal was whether the provisions of Section 10A stand attracted to an application under Section 9 which was filed before 5 June 2020 (the date on which the provision came into force) in respect of a default which has occurred after 25 March 2020.

Decision:

Hon'ble Supreme Court dismissed the appeal and held 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.

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.

...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"



QR CODE FOR FULL ORDER/JUDGEMENT:

¹<https://ibbi.gov.in/uploads/order/568ecfc7b8571937c62966a67b653aaf.pdf>