

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1270 of 2022

IN THE MATTER OF:

Plus Corporate Ventures Pvt. Ltd.

...Appellant

Versus

Transnational Growth Fund Ltd.

...Respondent

Present:

For Appellant: Mohd Nazim Khan, PCS along with Garmia K Watra.

For Respondent:

ORDER

31.10.2022: Heard Ld. PCS appearing for the Appellant.

2. This Appeal has been filed against the Order dated 17th August, 2022 passed by the National Company Law Tribunal, New Delhi, Bench-IV. By which Order, the Adjudicating Authority has rejected the Application being Company Petition No. (IB)-297(ND)/2022 under Section 9 filed under the Insolvency and Bankruptcy Code, 2016 by the Appellant as barred by Section 10-A of the Code.

3. Ld. PCS challenging the impugned Order contends that although in paragraph 7 of the Judgment, the Adjudicating Authority has noticed the date on which the repayments were to be received by the Appellant and last payment was to be received on 30th April, 2021 i.e. subsequent to the period which was mentioned in Section 10A hence it was open for the Appellant to file Section 9 Application for the entire amount i.e. Rs. 3,37,50,000/-.

4. We have considered the submissions of Learned PCS and have perused the record.

5. In paragraph 7 of the Judgement of the Adjudicating Authority, following has been stated.

“7. We find that as per the terms and conditions of the Sale Agreement dated 27.08.2020 as relied by both the parties, as per clause 2 of the said Sale Agreement the schedule for payment agreed between the parties is presented overleaf:-

2) Second Party agreed to pay the entire amount to first party as per schedule mentioned hereinafter.

| S. No. | Bank Name | Date | Mode of Payment | Amount |
|--------|-----------------------|------------|-----------------|---------------|
| 1. | AU Small Finance Bank | 16-09-2020 | RTGS/NEFT | 1,00,00,000/- |
| 2. | AU Small Finance Bank | 30-09-2020 | RTGS/NEFT | 1,00,00,000/- |
| 3. | AU Small Finance Bank | 31-10-2020 | RTGS/NEFT | 20,00,000/- |
| 4. | AU Small Finance Bank | 30-11-2020 | RTGS/NEFT | 20,00,000/- |
| 5. | AU Small Finance Bank | 31-12-2020 | RTGS/NEFT | 20,00,000/- |
| 6. | AU Small Finance Bank | 31-01-2021 | RTGS/NEFT | 20,00,000/- |
| 7. | AU Small Finance Bank | 28-02-2021 | RTGS/NEFT | 20,00,000/- |
| 8. | AU Small Finance Bank | 31-03-2021 | RTGS/NEFT | 20,00,000/- |
| 9. | AU Small Finance Bank | 30-04-2021 | RTGS/NEFT | 17,50,000/- |
| | | | Total | 3,37,50,000/- |

6. Section 10 A of the IBC provides as follows:

“Section 10A: Suspension of initiation of corporate insolvency resolution process.

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 notified 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.

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

7. When we look into the proviso to Section 10A, the expression is “provided that no Application shall ever be filed for initiation of CIRP of a Corporate Debtor for the said default occurring during the said period” thus default which has been committed from 16.09.2020 to 28.02.2021, no Application could have ever been filed. The Appellant’s submission that cumulatively application can be filed taking all amounts, cannot be accepted. The said submission goes contrary to the statutory scheme delineated by Section 10A proviso as noted above. When Appellant could not have filed the Application for the default which was committed, the Adjudicating Authority did not commit any error in rejecting the Application as barred by Section 10A of the Code. In so far as the last two default on 31st March, 2021 and 30th April, 2021 is concerned, the Adjudicating Authority has noticed that the total amount of the aforesaid two defaults is only Rs. 37,50,000/- which is below the threshold as provided under Section 4 of the Code.

We thus are of the view that no error has been committed in rejecting the Application filed under Section 9 of the Code. However, it shall always open for the Appellant to take steps as permissible in law. With these observations, the Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Basant/nn