

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1239 of 2023

IN THE MATTER OF:

Pan Pacific Engineering Services Pvt. Ltd.

...Appellant

Versus

Ayyappa Hydro Power Ltd.

...Respondent

Present:

For Appellant: Mr. Sankar P. Panicker, Mr. Mukund P., Advocates

For Respondent:

ORDER

27.09.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 25th July, 2023 by which Order the Adjudicating Authority has dismissed Section 9 Application filed by the Appellant.

3. The Appellant's case is that Operational Creditor is a registered MSME and Corporate Debtor through Tender Process shortlisted Operational Creditor for labour work. It is submitted that work order was issued in 2013 however the amount was not paid and the default was committed on 15th June, 2015. The Operational Creditor thereafter filed an Application before the Chairman MSME in 2019 for amount of Rs. 49,33,296/- which was allowed by Order dated 10th November, 2020. After the said Order, when the amount was not paid, Section 8 Notice was issued and Application was filed on 12.11.2021. The Adjudicating Authority took the view that the default having

been committed on 15th June, 2015, the Application is barred by time. It is submitted that the said finding is recorded in paragraph 13.

4. Learned Counsel for the Appellant challenging the Order contends that the default has to be treated as on 10th November, 2020 when the Order was passed by MSME Council and default was committed thereafter. He has referred to paragraph 14 of the Order where the Adjudicating Authority has observed that even if the date of default is taken as passing of the Order dated 10th November, 2020 passed by MSME, the petitioner did not cross the barrier of Section 4. Following observation was made in paragraph 14:

“14. Further even if the date of default is taken as the date of passing of the order by MSME i.e. 10th November 2020, then the petition does not cross the barrier of Section 4 of IBC. The pendency of an appeal against such an award is thus of no consequence and does not extend the date of default on this count as well.”

5. The Adjudicating Authority having already held in paragraph 13 that date of default being 15th June, 2015, the Application is barred by time, we see no reason as to why again fresh period of limitation can be given to the Appellant from the date of MSME Order dated 10th November, 2020. Right to file application under Section 7 accrued to the Appellant on 15th June, 2015 which was a date of default. If we take the date of default as on 10th November, 2020 as contended by Learned Counsel for the Appellant, the said date is

between the prohibited period under Section 10A and no application can be filed for any default committed during the Section 10A Period.

6. We thus are of the view that submission of Appellant that date of default be taken as 10th November, 2020, Appellant cannot improve the case. We thus are of the view that no error has been committed by the Adjudicating Authority in rejecting Section 9 Application. Hence, the Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

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

Basant/nn