

LEGAL UPDATES

NCLAT: DOCUMENTS INCLUDING NPA DATE TO SHOW THE EXISTENCE OF LEGALLY ADMITTABLE FINANCIAL DEBT

The National Company Law Tribunal dismissed the appeal challenging the National Company Law Tribunal's order that allowed an insolvency application. The Appellant stated that the date of default had not been mentioned in the Form-1 filed before the NCLT and, therefore, the application ought not to have been admitted. On the contrary, it was stated by the Respondent Financial Creditor that it had submitted sufficient documentary evidence showing the date on which default was committed by the Corporate Debtor, and there is no error in the observations of the Adjudicating Authority.

The Appellant further argued that:

- (i) NCLT granted the application based on an incorrect presumption that the date of default is mentioned in the pleadings, whereas the Respondent misrepresented this to NCLT.

- (ii) The limitation period begins when the right to apply first accrues, but in the present case, the date of NPA was taken as the "date of default".

The Appellate Tribunal after extensively hearing the parties stated that a list of supplementary papers that must be presented with the application to show the existence of a financial obligation, its scope, and the date of default is outlined in Clause 8 of Part V in Form 1. It observed that the Financial Creditor has shown the date of NPA by providing the relevant and legally sound documents admissible as evidence.

Additionally, the Appellate Tribunal noted that the only error in the entire proceedings before the Adjudicating Authority was the Respondent's failure to provide the date of default in Part IV of Form 1. It concluded that *"...the non-mentioning of the date of default in Col. IV is not fatal to the application and on the sole ground, the application cannot be rejected mere taking a technical impediment...that 'it is only a directory'."*

As far as the issue of limitation was concerned, it based its reasoning on a verdict of the Hon'ble Supreme Court's in Laxmi Pat Surana case, NCLAT concluded that "*...even if the 90 days before NPA is taken into consideration to decide default...the application is within the period of limitation.*"