



No Default by Declaration: Date of Default in Section 7 Petition Must Be Supported by Evidence

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Introduction

The Insolvency and Bankruptcy Code, 2016 ("IBC") provides a swift mechanism for Creditors to initiate Corporate Insolvency Resolution Proceedings ("CIRP") upon occurrence of a default. However, the threshold requirement for triggering Section 7 of the Code is the existence of a financial debt and default in its repayment alongwith valid date of default. In the absence of any concrete agreement stipulating repayment terms, the "date of default" cannot be a matter of mere assertion or assumption by the Creditor.

This crucial principle was recently reaffirmed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Sushma Paranjpe v. Rohan Developers Private Limited*.¹

Factual Background

In this case, the Appellant's late husband had advanced ₹ 4 crores to the Respondent-Company in 2008, originally as earnest money towards a flat booking. When the Project failed to progress, the parties orally agreed that the sum would be treated as an unsecured loan, with interest @ 12% p.a. The Company paid interest until 2016-17 and then defaulted.

The Appellant filed a Section 7 Petition before the NCLT in 2021, asserting 01.10.2017 as the date of default. The Adjudicating Authority dismissed the Petition, holding that no definite default date could be ascertained and that the alleged default, if any, fell within the suspension period under Section 10A of the Code.

Aggrieved, the Order passed by the NCLT was challenged. The Hon'ble National Company Law Appellate Tribunal, New Delhi, examined whether such mere assertion of a date, without a supporting agreement between the parties, can amount to a legally valid "date of default" for the purposes of Section 7.

Findings of the Hon'ble Appellate Tribunal

The Appellate Tribunal made several critical observations:

1. **Absence of an Agreement:**

There was no written agreement between the Creditor and the Corporate Debtor defining the repayment schedule or identifying what would constitute an event of default. The transaction, therefore, was in the nature of a *loan repayable on demand*.

2. **Mere Assertion Not Sufficient:**

The Tribunal categorically held that "*mere insertion of any date in Form 1 at Part IV of the Section 7 Application does not make that date of default valid and binding, especially when there is no agreement between the two parties as to what shall constitute an event of default.*"

Consequently, the creditor must adduce clear evidence, such as correspondence, acknowledgment, or contractual terms, in order to substantiate when the default actually occurred.

¹ MANU/NL/0969/2023



3. **Loan on Demand & Section 10A:**

Since the demand for repayment was made only on 01.02.2021 vide a recall notice, the default could be deemed to have occurred on 04.02.2021, considering that the notice is deemed to have been delivered within 48 hours. The NCLT held that even if the date of default is assumed to be 04.02.2021, the Petition is not maintainable as this fell within the Section 10A suspension period.

Legal Significance

This decision reinforces several key aspects of insolvency jurisprudence:

- **Substantiation of Default:**
Merely stating a date of default in the Section 7 Petition is insufficient. The Creditor bears the burden to *prove* the date of default through documents or conduct reflecting a breach of repayment terms.
- **Role of Contractual Terms:**
When no written Agreement exists, the alleged loan is treated as a loan on demand. Default occurs only upon failure to repay after such a demand is made and not at any arbitrary date chosen by the Creditor.
- **Judicial Scrutiny under Section 7:**
The Adjudicating Authority must examine the evidence of both “debt” and “default” rather than relying on the Creditor’s assertion. A Section 7 Petition cannot be used as a tool of coercion or for enforcing speculative or investment-based claims.

Conclusion

The ruling in *Sushma Paranjpe v. Rohan Developers Private Limited* underscores that the sanctity of insolvency proceedings depends on verifiable defaults, not on self-serving declarations. The NCLAT’s reasoning upholds procedural fairness and prevents misuse of the Code by ensuring that only genuine and provable defaults can trigger the severe consequences of corporate insolvency.

In essence, a creditor cannot simply assert any date of default in a Section 7 Petition and expect the same to be accepted, especially when no Agreement defines the repayment obligation. The decision serves as a cautionary precedent that the proof of default is as critical as the existence of debt itself.

The NCLAT’s decision reinforces the principle that in the absence of Agreement specifying the events of default, the alleged date of default cannot be whimsically decided by the Creditor and the Creditor needs to be put to strict proof to establish the date of default.
