

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 65 of 2017**

**IN THE MATTER OF:**

**Diamond Engineering (Chennai)**

**...Appellant**

**Versus**

**Shah Brothers**

**...Respondent**

**Present:**

**For Appellants :**

**Shri A.K. Mylasamy, Senior Advocate assisted  
by Ms. Shalini Kaul, Advocate**

**For Respondent:**

**Shri S. N. Mookherjee, Senior Advocate  
assisted by Shri Pritha Srikumar Iyer, Shri  
Sulabh Rewari, Advocates**

**ORDER**

**27.07.2017** This appeal has been preferred by the appellant – ‘Corporate Debtor’ against the order dated 6<sup>th</sup> June, 2017 passed by the learned Adjudicatory Authority (National Company Law Tribunal), Chennai whereby and whereunder the application preferred by the respondent – ‘Operational Creditors’ under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’) for initiation of resolution against the ‘Corporate Debtor’ has been admitted, order of moratorium has been passed and the matter has been referred under Section 14 of the I & B Code for appointment of an

'Interim Resolution Professional' with further prohibitory order(s) as made therein.

2. Learned counsel appearing on behalf of the appellant submitted that the bills on the basis of which default was claimed by the respondent – 'Operational Creditor', are forged and fabricated documents. On the basis of forged document, no claim can be entertained under Section 9 of the I & B Code. However, from the record, we find that no such objection was made by the appellant, prior to receipt of Notice under Section 8 of the I & B Code.

3. The other ground taken by the appellant is that the person who signed 'Form 3 and Form 5', as prescribed in I&B Code (application to Adjudicatory Authority) under Rules, 2016 for issuing notice under Section 8 or filing application under Section 9 of the I&B Code, has not been signed by 'authorised person' authorised by the Board of Directors. However, in reply to such averment the respondents have shown that apart from the fact that a decision was taken by the respondent company to contest the case, the person who signed the notice in the Form3 and Form 5 is one of the Director of the 'operational creditor' (respondent company). From the provisions of the law, including Form 3 and Form 5, we find that any person who is authorised and having relation to the company is entitled to issue notice under Section 8 of the I&B Code and is also

competent to file an application under Section 9. In such circumstances, the person, who has signed the notice under Section 8 and filed the petition under Section 9 being the Director of the Company and having authorised by the Board of Directors or the company, no interference is called for.

4. Learned counsel for the appellant next submitted that no proper bank certificate was filed by the respondent but such plea having not taken by the appellant before the Learned Adjudicating Authority, we are not inclined to notice any new plea. We find no merit in this appeal. It is accordingly dismissed.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Balvinder Singh ]  
Member (Technical)