

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

**Company Appeal (AT) (Insolvency) No. 623 of 2018**

**IN THE MATTER OF:**

**Sudhi Sachdev**

**...Appellant**

**Vs**

**APPL Industries Ltd.**

**....Respondent**

**Present:**

**For Appellant: Mr. M. P. Sahay, Advocate.**

**For Respondent:**

**ORDER**

**13.11.2018:** This appeal has been preferred by 'Sudhi Sachdev', Promoter of 'M/s Auto Décor Pvt. Ltd.' (Corporate Debtor) against order dated 2<sup>nd</sup> August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench whereby application under Section 9 of I&B Code preferred by Respondent - 'APPL Industries Ltd.' (Operational Creditor) has been admitted and order of moratorium has been passed.

2. Learned counsel appearing on behalf of the Appellant submits that there was an existence of dispute in view of the fact that the Respondent has instituted cases under Section 138/441 of Negotiable Instruments Act, 1881, which are pending in the court of Metropolitan Magistrate, Gurgaon. During the proceeding, the Corporate Debtor has paid Rs.31,85,525/-, reducing the outstanding balance to Rs.34,25,251/-. The last payment was made on 18<sup>th</sup> March, 2016.

3. Referring to the decision of Hon'ble Supreme Court in '*R. Vijayan Vs. Baby and Anr.*', (2012) 1 Supreme Court Cases 260, learned counsel for the Appellant submitted that the proceeding under Section 138 is really a civil cases of recovery of the money, therefore, in view of the pendency of such case, application under section 9 of I&B Code is not maintainable.

4. Having heard learned counsel for the Appellant and perusal of records, we are not inclined to accept the submission made on behalf of the Appellant.

5. In “*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*” – (2018)1 SCC 407, the Hon’ble Supreme Court observed as follows:-

**29.** *The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.”*

6. In the present case, it is not in dispute that there is a debt payable to the Operational Creditor and default on the part of the Corporate Debtor. The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute pending before a court of law. Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute. We find no merit in this appeal. It is accordingly dismissed. No Costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)