

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1150 of 2019

IN THE MATTER OF:

Harpreet Singh Ahluwalia

...Appellant

Vs

Eatigo India Pvt. Ltd. & Anr.

....Respondents

Present:

**For Appellant: Mr. Arunava Mukherjee and Mr. Arvind Maniam,
Advocates.**

**For Respondents: Mr. Arpan Behl, Advocate for IRP.
Mr. Nikhil Verma, Mr. Rishabh Jain and
Ms. Kamna Singh, Advocates.**

ORDER

18.11.2019: Respondent –‘Eatigo India Pvt. Ltd.’ filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’) for initiation of Corporate Insolvency Resolution Process against ‘Liquid Glass Hospitality LLP’ (Corporate Debtor) which was admitted by impugned order dated 9th October, 2019 by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai.

2. Learned counsel for the Appellant submitted that there is a pre-existing dispute and referred to legal notice given by the Operational Creditor dated 19th December, 2018 to which reply was given by the Corporate Debtor on 24th January, 2019. However, from the reply dated 24th January, 2019, we find that the Appellant has disputed the quantum of the payment but there is no dispute with regard to the service rendered by the Operational Creditor.

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

“27. *The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is*

disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

4. From the aforesaid provision it will be evident that even if the amount is disputed, if the claim is more than Rupees One Lakh, the Corporate Insolvency Resolution Process can be initiated.

5. Learned counsel for the Appellant wanted time to settle the claim with Respondent. However, Mr. Nikhil Verma, appearing on behalf of the Interim Resolution Professional submitted that claim has been received and the Committee of Creditors has not been constituted. There is a Financial Creditor whose claim is Rs.9 Crore.

6. In fact and circumstances, we are not inclined to interfere with the impugned order passed by Adjudicating Authority. However, we allow the Appellant to settle the claim with all the claimants in terms of Section 12A of the I&B Code, if the Appellant so chooses.

7. The Appellant and other Promoters are directed to handover all the assets and records of the Corporate Debtor to the Interim Resolution Professional, immediately. Failing which, the Adjudicating Authority will take appropriate action against the Appellant/ Promoters of the Corporate Debtor

and this Appellate Tribunal may initiate Contempt Proceeding for non-compliance of directions.

8. Appeal is disposed of with aforesaid directions. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

am/sk