

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

**Company Appeal (AT) (Insolvency) No. 513 of 2019**

**IN THE MATTER OF:**

**M/s. Bannari Amman Spinning Mills Ltd. ...Appellant**

**Vs.**

**M/s. My Choice Knit & Apparels Pvt. Ltd. ...Respondent**

**Present: For Appellant: - Mr. Mudit Sharma and Ms. Nandini Sharma, Advocates.**

**O R D E R**

**03.09.2019—** The Appellant- 'M/s. Bannari Amman Spinning Mills Ltd.' moved an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. My Choice Knit & Apparels Pvt. Ltd.'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench, Bengaluru, taking into consideration the relevant facts, including the fact that the Respondent denied certain parts of the claim, dismissed the application mainly on the ground that the Respondent- ('Corporate Debtor') is a Micro, Small and Medium Enterprise (MSME), and the Act provides some safeguards to run its business and also a mechanism is provided in the Act itself to settle the dispute arising out of the business transactions made by the MSME with the other business establishments.

Contd/-.....

2. The Respondent has appeared and filed reply affidavit but not disputed the aforesaid fact. We find that there is a debt payable by the Respondent which is more than Rs. 1 Lakh.

3. In the aforesaid circumstances, as there being a default of debt of more than Rs. 1 Lakh and, in absence of any pre-existence of dispute, we hold that the Adjudicating Authority has no jurisdiction to reject the application under Section 9 only on the ground that the 'Corporate Debtor' is MSME. There is no such provision under the Act which stipulates that a Company ('Corporate Debtor') which is MSME does not come within the purview of 'I&B Code' or application under Sections 7 or 9 or 10 is not maintainable.

4. For the reasons aforesaid, we set aside the impugned order dated 4<sup>th</sup> April, 2019 and remit the case to the Adjudicating Authority which is directed to admit the application under Section 9 of the 'I&B Code' after notice to the 'Corporate Debtor' so as to enable the 'Corporate Debtor' to settle the claim prior to the admission of application.

The appeal is allowed with aforesaid observations and directions.

No costs.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice A.I.S. Cheema)  
Member(Judicial)

(Kanthi Narahari)  
Member(Technical)

Ar/g