

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

**Company Appeal (AT) (Insolvency) No. 971 of 2019**

**IN THE MATTER OF:**

**Ambience Pvt. Ltd.**

**...Appellant**

**Versus**

**Vistra ITCL (India) Ltd.**

**...Respondent**

**Present:**

**For Appellant :**

**Dr. Abhishek Manu Singhvi, Senior Advocate  
Mr. Rajiv Ranjan, Senior Advocate with  
Mr. P.K. Agarwal, Mr. Amit Bhandari and Ms. Tannya  
Sharma, Advocates**

**For Respondents :**

**Mr. Arun Kathpalia, Senior Advocate with  
Mr. Vijay Nayar and Mr. Eklavya Dwivedi, Advocates  
for 1<sup>st</sup> Respondent  
Mr. Sanjay Jain, Advocate for 2<sup>nd</sup> Respondent**

**O R D E R**

**19.09.2019** As the appeal is at the instance of ‘Ambience Private Limited’ (Corporate Debtor) and in view of the decision of Hon’ble Supreme Court in “*Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407*] the appeal is not maintainable at the instance of the Corporate Debtor. The learned counsel for the Appellant orally prays for and is allowed to substitute ‘Mr. Raj Singh Gehlot’ Director of the ‘Corporate Debtor’, who has already verified the record, filed the affidavit alongwith the Vakalatnama, as Appellant. We also allow the Appellant to transpose ‘Ambience Private Limited’ (Corporate Debtor) through Interim Resolution Professional as 2<sup>nd</sup> respondent.

Let necessary corrections be made in the cause-title and other relevant pages of the paper book including the verification of the appeal in the course of the day.

Learned counsel appearing on behalf of the Appellant submits that the Respondent – ‘Vistra ITCSL (India) Limited’ did not come within the meaning of ‘Financial Creditor’ as defined under Section 5(7) read with Section 5(8) of the I&B Code. According to him, the Respondent is a partner for the joint venture and fails to make out a case that he has invested any amount with the ‘Corporate Debtor’ for consideration of time value of money. It is submitted that whatever amount has been paid to the third party, the Adjudicating Authority has failed to notice the same.

Let notice be issued on the Respondents.

Mr. Arun Kathpalia, Senior Advocate with Mr. Vijay Nayar appears on behalf of the 1<sup>st</sup> Respondent. Mr. Sanjay Jain, Advocate appears on behalf of newly impleaded 2<sup>nd</sup> Respondent – (Interim Resolution Professional). No further notice need to be issued on them. Learned counsel for the Appellant will serve a copy of the paper-book on each of the Respondents in the course of the day. They are allowed to file reply-affidavit along with Vakalatnama within 10 days. Rejoinder, if any, be filed by the Appellant within 10 days thereof.

Post the case ‘for Admission (After Notice)’ on **17<sup>th</sup> October, 2019** on the top of the list. The appeal may be disposed of at the stage of the admission.

In the meantime, the ‘Interim Resolution Professional’ will ensure that the company remains going concern and will take assistance of the (suspended) Board of Directors and the officers/ Directors/employees. The person who is authorised to sign the bank cheques may issue cheques but

only after approval of the 'Interim Resolution Professional'. The bank account of the 'Corporate Debtor' be allowed to be operated for day-to-day functioning of the company such as for payment of current bills of the suppliers, salaries and wages of the employees'/workmen electricity bills etc.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

[ Kanthi Narahari ]  
Member (Technical)

/ns/sk