

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

**Company Appeal (AT) (Insolvency) No. 308 of 2017**

**IN THE MATTER OF:**

**Atul Sharma**

**...Appellant**

**Versus**

**Gudearth Homes Infracon Pvt. Ltd.  
& anr.**

**...Respondents**

**Present:**

**For Appellant :**           **Mr. Mukul Kumar Gupta and Mr. N.K. Singh,  
Advocates**

**For 1<sup>st</sup> Respondent:**   **Ms. Anju Jain and Mr. Hitesh Sachar, Advocates**  
**Mr. Sumnish Kr. Jain, RP**

**O R D E R**

**06.03.2018**       This appeal has been preferred by the Corporate Debtor – Veebro Technoplast Private Limited against order dated 22<sup>nd</sup> September, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Principal bench, New Delhi whereby and whereunder the application preferred by the respondent – ‘Gudearth Homes Infracon Private Limited’ & Ors. (Financial Creditors) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘I&B Code’) has been admitted, order of moratorium has been passed and the Resolution Professional has been appointed.

2.     Learned counsel for the appellant submits that there is no ‘debt’ in the eyes of the law as the amount was not paid to the Corporate Debtor. However, from the record we find that Mr. Atul Sharma and Mr. Nipun Sharma, two

Directors of the Corporate Debtor were introduced through common friend in the year 2013. At that time, Corporate Debtor needed financial assistance for a short period, therefore, Corporate Debtor approached and requested the Financial Creditor to help them out. Thereafter, on different dates as per the table mentioned at Part IV of the application (Form I), sum of Rs. 51,750,000/- was disbursed by the Financial Creditors which include sum of Rs. 25,00,000 given by one Mr. Vinay Lakra. Therefore, the arguments advanced by the appellant that no amount be given to the Corporate Debtor cannot be accepted.

Apart from the aforesaid fact we are of the view that the appeal preferred by Corporate Debtor is not maintainable in view of the decision of the Hon'ble Supreme Court in "**M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr.— 2017 SCC OnLine SC 1025**", wherein Hon'ble Supreme Court observed as follows:

*"11. Having heard the learned counsel for both the parties, we find substance in the plea taken by Shri Salve that the present appeal at the behest of the erstwhile Directors of the appellant is not maintainable. Dr Singhvi stated that this is a technical point and he could move an application to amend the cause-title stating that the erstwhile Directors do not represent the Company, but are filing the appeal as persons aggrieved by the impugned order as their management right of the Company has been taken away and as they are otherwise affected as shareholders of the Company. According to us, once an insolvency professional is appointed to manage the Company, the erstwhile Directors who are no longer*

*in management, obviously cannot maintain an appeal on behalf of the Company. In the present case, the Company is the sole appellant. This being the case, the present appeal is obviously not maintainable. However, we are not inclined to dismiss the appeal on this score alone. Having heard both the learned counsel at some length, and because this is the very first application that has been moved under the Code, we thought it necessary to deliver a detailed judgment so that all courts and tribunals may take notice of a paradigm shift in the law. Entrenched managements are no longer allowed to continue in management if they cannot pay their debts.”*

3. For the reasons aforesaid, we are not inclined to interfere with the impugned order. The appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

/ns/uk