

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

**Company Appeal (AT) (Insolvency) No. 429 of 2018**

**IN THE MATTER OF:**

**Canara Bank**

**...Appellant**

**Versus**

**Sri Chandramoulisvar Spinning Mills  
Pvt. Ltd. & Anr.**

**...Respondents**

**Present:**

**For Appellant :                    Mr. Ajay Gupta, Advocate**

**ORDER**

**03.08.2018**            This appeal has been preferred by the Canara Bank against the order dated 7<sup>th</sup> June, 2018 passed by the Adjudicating Authority (National Company law Tribunal), Division Bench, Chennai in CP/588/(IB)/CB/2018 whereby and whereunder the application preferred by M/s. Sri Karthic Polypacks (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the, “**I&B Code**”) against M/s. Sri Chandra Moulisvar Spinning Mills Private Limited (Corporate Debtor) has been admitted, order of moratorium has been passed and the name of the ‘Interim Resolution Professional’ has been called for.

Learned counsel for the appellant (Financial Creditor) submits that they had taken possession of certain land of the ‘Corporate Debtor’ and for the said reason the ‘Corporate Debtor’ in collusion with ‘Operational Creditor’ get the application under Section 9 of the I&B Code filed. However, in absence of any evidence such submission cannot be accepted. Further, the Adjudicating

Authority also could have not decided such issue of collusion which can be decided by the Court of competent jurisdiction.

It was then contended that the Demand Notice was not proper but that cannot be a ground as we find that the Demand Notice dated 5<sup>th</sup> April, 2018 was issued as per the provisions of sub-section(1) of Section 8 of the I&B Code calling upon the 'Corporate Debtor' for payment of the outstanding dues of Rs.7,17,626/- along with 24% interest as on 21<sup>st</sup> June, 2017.

At this stage, learned counsel for the appellant submits that the Demand Notice was not served on the 'Corporate Debtor', but such submission cannot be accepted because the 'Corporate Debtor' has not raised any such objection that it has not served on it and has also not disputed the claim and the default.

As per decision of the "*Innoventive Industries Ltd. v. ICICI Bank - (2018) 1 SCC 407*" if the application under Section 9 is complete and there is no 'existence of dispute' and there is a 'debt' and 'default' and then the Adjudicating Authority is bound to admit the application. The appellant is aggrieved as it has already taken steps under SARFAESI Act, 2002 but such action cannot continue as the I&B code will prevail over SARFAESI Act. In absence of any merit, the appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

/ns/uk/