

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 480 of 2019

IN THE MATTER OF:

Deegee Cotsyn Pvt. Ltd.

.....Appellant

Vs.

Phoenix ARC Pvt. Ltd.

.....Respondent

Present :

**For Respondents: Mr. Suresh Dutt Dobhal, Ms. Sonakshi Dhiman,
 Advocates**

O R D E R

03.05.2019 - The Respondent Phoenix ARC Pvt. Ltd. has filed an application against Deegee Cotsyn Pvt. Ltd. ('Corporate Debtor'). The same having been admitted by order dated 26th February, 2019 by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, the appeal has been preferred by 'Corporate Debtor'.

Learned counsel for Appellant submits that the Respondent is an assign in terms of the provisions of SARFAESI Act, 2002. They have also taken steps under SARFAESI Act, 2002. However, we are not inclined to entertain this appeal on the following grounds:-

- (i) The appeal is not maintainable at the instance of 'Corporate Debtor' in terms of the decision of Hon'ble
 - (ii) Supreme Court in "*Innoventive Industries Ltd. Vs. ICICI Bank (2018) 1 SCC 407*" –
-contd.

“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;

- (iii) A person may be assignee under the SARFAESI Act, 2002. On that ground the application u/s 7 cannot be rejected; and*
- (iv) The action, if any, taken under SARFAESI Act, 2002 will not proceed in view of the order passed, in view of provisions of Moratorium passed under I&B Code.*

For the aforesaid reasons, we dismiss the appeal. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/gc