

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

**Company Appeal (AT) (Insolvency) No. 249 of 2017**

**IN THE MATTER OF:**

**Engenious Engineering Pvt. Ltd.**

**...Appellant**

**Vs.**

**Onaex Natura Pvt. Ltd.**

**...Respondent**

**Present: For Appellant: - Mr. V. Seshagiri, Mr. Anchit Tripathi and Mr. Adhish Rajvanshi, Advocates.**

**For Respondent: - Mr. Jay Savla and Mr. Prabhat Chaurasia, Advocates.**

**ORDER**

**01.11.2017-** In this appeal, the appellant has challenged the order dated 20<sup>th</sup> September, 2017 passed by Ld. Adjudicating Authority (National Company Law Tribunal) Ahmedabad Bench, Ahmedabad in Company Petition No. (IB) 92/7/NCLT/AHM/2017 whereby and whereunder the application preferred by appellant under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been rejected on the ground that the appellant is not a 'Financial Creditor'.

2. We have heard learned counsel appearing on behalf of the appellant and the respondent.

3. From the record we find that the appellant invested some amount with the respondent company and was allotted equity shares. In a petition under Sections 397 & 398 of the Companies Act, 1956, the then Company Law Board cancelled the allotment of share capital in favour of the appellant. On such cancellation, the amount is lying with the respondent

company which has been shown as debt amount of Rs.79,15,480/-. Though, the aforesaid fact has been disputed by the learned counsel for the respondent, but without going into the question as to what amount is lying with the respondent, we do find nothing on the record to suggest that the appellant come within the meaning of 'Financial Creditor' under Section 5(8) read with Section 5(9) of the 'I&B Code'. Even if it is accepted that the amount has been shown to be a debt in the records of the Company, does not mean that the appellant is a 'Financial Creditor'.

4. We find no merit in this appeal. It is accordingly dismissed. No Cost.

5. However, the impugned order passed by the Adjudicating Authority will not come in the way of the appellant to move before the appropriate forum for appropriate relief.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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