

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

**Company Appeal (AT) (Insolvency) No. 103 of 2018**

**IN THE MATTER OF:**

**Durlum India Pvt. Ltd.**

**...Appellant**

**Vs.**

**Piccadily Hotels Pvt. Ltd.**

**...Respondent**

**Present: For Appellant: Mr. Jayant Mehta, Mr. Nisheet, Mr. A. Sharma, Mr. Pankaj Aggarwal and Mr. Sajal Jain, Advocates**

**For Respondent: - Mr. Virender Ganda, Sr. Advocate with Mr. Varun Jain, Mr. Navin Kumar, Mr. Vishwdeep Hooda, Ms. Shreya Jain and Mr. Ayandeb Mitra, Advocates.**

**ORDER**

**24.07.2018—** Learned counsel for the Appellant submits that there was no existence of dispute. The respondent has not admitted the liability of 'debt' or 'default', what they disputed is quantum of amount claimed. It is accordingly submitted that the application under Section 9 could not have been rejected on such ground.

*Prime Facie* such submission seems to be attractive but if the exact amount could have been given in the Demand Notice under Section 8, the 'Corporate Debtor' could have got an opportunity to settle the claim.

In view of the aforesaid, learned counsel for the appellant sought permission to withdraw the appeal with liberty to appellant to issue fresh Demand Notice under Section 8(1) and in case of failure to settle the claim, to file an application under Section 9 against the 'Corporate Debtor'.

Learned counsel appearing on behalf of the respondent submits if a Demand Notice is issued it will be properly replied by the 'Corporate Debtor'

and in case application under Section 9 is filed, the 'Corporate Debtor' will take up its stand before the Adjudicating Authority.

At this stage, we may only observe that we are not happy with the findings of the Adjudicating Authority (National Company Law Tribunal) on the question whether the amount is recoverable under the law or not which the authority was not required to decide having no permission while dealing with application under Section 9.

For the said reason, we set aside the impugned order dated 25<sup>th</sup> January 2018 a wrong reason has been shown in view of the prayer made on behalf of the counsel for the appellant, we give liberty to the appellant to issue fresh Demand Notice under Section 8(1) and if so required to proceed in accordance with law. The respondent may take its own stand at the appropriate stage. In such case the Adjudicating Authority will pass order in accordance with law uninfluenced by the impugned order dated 25<sup>th</sup> January 2018 and the observations made in this appeal.

It is made clear that the Adjudicating Authority cannot look into any dispute in an application under Section 9, except existence of a dispute, if any, existed prior to the issuance of Demand Notice under Section 8(1), which will be the first Demand Notice issued in the present case i.e. on 21<sup>st</sup> August 2018.

The appeal stands disposed of with the aforesaid observations.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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