

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal (AT) (Insolvency) No. 314 of 2018**

**IN THE MATTER OF:**

**Zapp India Ltd.**

**...Appellant**

**Vs**

**Maheshwar Textile**

**....Respondent**

**Present:**

**For Appellant: Mr. Gaurav Sharma Saraswat, Advocate.**

**For Respondents: Mr. Abhishek Anand, Advocate.**

**ORDER**

**31.07.2018:** This appeal has been preferred by M/s Zapp India Ltd. (Corporate Debtor) against order dated 13<sup>th</sup> June, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench in Company Petition No. IB-344(ND)/2018, whereby application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') filed by Respondent (Operational Creditor) has been admitted, order of moratorium has been passed and Operational Creditor has been asked to propose name of another Resolution Professional. The grievance of the Corporate Debtor is that there was a disciplinary proceeding pending against the Resolution Professional, which was earlier proposed and therefore, Operational Creditors was asked to propose second name which is illegal. No argument has been advanced on legality or propriety of order of admission of the application on merit.

2. The Hon'ble Supreme Court in "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*" – (2018)1 SCC 407, *in para 11*, held 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. After admission of the application under Section 9 of the I&B Code, an appeal at instance of the Corporate Debtor is not maintainable. Therefore, we are not inclined to grant any relief the appeal being not maintainable by the Corporate Debtor. This apart, on merit also we do not find any ground to interfere with the impugned order. The appeal is accordingly dismissed. No cost.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

*am/uk*