

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 185 of 2019

IN THE MATTER OF:

M/s. Global Infonet Distribution Pvt. Ltd.

.....Appellant

Vs.

M/s. Tespa Infotech Pvt. Ltd.

.....Respondent

Present :

For Appellant: Mr. Ashok Kr. Anchalia, Mr. Ketan Madan, Mr. Himanshu Harbola, Mr. Vidhu Satpaul, Advocates

For Respondents: Mr. D. Sreenivasan, Mr. Anandaselvam, Ms. Kavita Bhardwaj, Advocates

O R D E R

08.08.2019 - The Appellant - 'Global Infonet Distribution Pvt. Ltd.' ('Operational Creditor') preferred application u/s 9 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) for initiating 'Corporate Insolvency Resolution Process' against M/s. 'Tespa Infotech Pvt. Ltd.' ('Corporate Debtor'). The Adjudicating Authority dismissed the same on the ground that there is no debt payable in fact.

2. The aforesaid final order given by the Adjudicating Authority ('National Company Law Tribunal') Chennai Bench, Chennai on the basis of stand taken by the 'Corporate Debtor' and records as were produced. contd.

3. In the case of *“Innoventive Industries Ltd. Vs. ICICI Bank (2018) 1 SCC 407”*, the Hon’ble Supreme Court observed and held that *“where the Adjudicating Authority is to be satisfy that a default has occurred, that the ‘Corporate Debtor’ is entitled to point out that a default has not occurred in the sense that the ‘debt’, which may also include the disputed claim, is not due. The ‘debt’ may not be due if it is not payable in law or in fact.”*

4. Learned Counsel for the Appellant submits that the records which were submitted by the Respondent before the Adjudicating Authority were fictitious. Therefore, such document could not have been relied upon to come to a conclusion that there is no debt payable. However, such dispute could not have been decided by the Adjudicating Authority nor can be decided by this Appellate Tribunal as to whether the documents were fictitious or is of earlier period which could be decided only by the forum of competent jurisdiction.

5. Therefore, we hold that the observations made by the Adjudicating Authority is on the basis of record but it does not mean that the Adjudicating Authority has given any finality with regard to genuineness of the document which was placed before it.

....contd.

6. For the aforesaid reason, we are not inclined to interfere with the Impugned Order and allow the Appellant to move before the Appropriate Forum for relief, in which case, the Appropriate Forum will decide the issue on merit uninfluenced by the Impugned Order passed by the Adjudicating Authority or by this Appellate Tribunal.

The appeal stands disposed of with aforesaid observation. No Costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/sk