

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

**Company Appeal (AT) (Insolvency) No. 663 of 2018**

**IN THE MATTER OF:**

**M. Goutham Chand Bafna & Anr.**

**...Appellants**

**Versus**

**M/s. Hi-Style India (P) Ltd.**

**...Respondent**

**Present:**

**For Appellant :           Mr. Gautam Swarup, Advocate**

**For Respondent :       Mr. Avinash Wadhvani and Mr. Balaji Gopalan,  
Advocates**

**O R D E R**

**28.05.2019**       Learned counsel appearing on behalf of the Appellants submits that the application u/s 9 of the 'Insolvency and Bankruptcy Code, 2016' has been rejected on the ground of the 'existing dispute' but the finding made therein is further that the subject matter is hit by *res judicata* which is uncalled for.

2.       On hearing the learned counsel for the parties, we are of the view that the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai was only supposed to consider the question as to whether there is a 'debt' and 'default' and whether there is a 'pre-existing dispute'. The resolution process not being a litigation or money claim or suit, the Adjudicating Authority was not supposed to decide whether the subject matter was hit by *res judicata* or not.

3.       For the reasons aforesaid, while we are not disturbing substantive part of the impugned order dated 4<sup>th</sup> September, 2018 passed by the Adjudicating

Authority, we set aside the part of the impugned order of the Adjudicating Authority where it is held that subject matter is hit by *res judicata*. It will be open to the Appellant to move before any appropriate Forum or any Authority on that count for appropriate relief uninfluenced by the order passed by the Adjudicating Authority having not decided the same.

The appeal stands disposed of with aforesaid observations.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

[ Kanthi Narahari ]  
Member (Technical)

/ns/sk