

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 44 of 2019

IN THE MATTER OF:

DEB Kumar Majumder & Ors.

...Appellants

Versus

State Bank of India

...Respondent

Present:

For Appellants : **Mr. Arjun Asthana, Ms. Sreenita Ghosh and
Mr. Debanjan, Advocate**

ORDER

14.01.2019 The appellants are workmen/employees of 'M/s. Tantia Constructions Limited'. The 'State Bank of India' (Financial Creditor) has filed an application under Section 7 of the I&B Code for initiation of the 'corporate insolvency resolution process' against M/s. Tantia Constructions Ltd. (Corporate Debtor). The appellants moved an application for intervention by filing CA (IB)646/KB/18 to bring to the notice that the winding up proceedings has already been initiated under Section 433(e) and Section 434 of the Companies Act against M/s. Tantia Constructions Ltd. (Corporate Debtor) and thereby the application under Section 7 is not maintainable in terms of Section 11 of the I&B Code. The Adjudicating Authority held that the intervener has no *locus standi* and adjourned the matter for argument on

17th January, 2019 by the impugned order dated 3rd January, 2019, which is under challenge.

We agree with the observations made by the Adjudicating Authority at the stage of application filed under Section 7 that no person has right to claim for hearing except the 'Corporate Debtor'. No other 'Financial Creditor' or 'Operational Creditor' or any other creditor is required to be heard except the 'Financial Creditor' who has filed an application under Section 9 of the I&B Code. The Adjudicating Authority is required to notice whether there is a 'debt' and 'default' committed by the 'corporate debtor' if the application under Section 7 is filed. On the other hand, if the application is under Section 9, the Adjudicating Authority is to notice whether there is a 'debt' and 'default' and whether there is a 'pre-existing dispute'. However, the Adjudicating Authority should also keep in mind the provisions of Section 11 whereunder application under Section 7 or 9 is not maintainable if winding up proceedings has been initiated against the 'corporate debtor' as decided by this Appellate Tribunal in "***M/s. Unigreen Global Private Limited vs. Punjab National Bank & Ors. – Company Appeal (AT)(Insolvency) No. 81 of 2017***". In the aforesaid background while we do not allow the appellants to oppose or support the application at the stage of admission, direct the Adjudicating Authority to decide the matter taking into consideration the fact brought by the appellant to its notice to find out whether a winding up proceedings has already been initiated against the 'corporate debtor' or not. If so required, the State Bank of India and M/s. Tania Construction Limited should be asked to clarify the same.

If the appellants are aggrieved by the order passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, in such case, the appellants will challenge the same before this Appellate Tribunal and raise all the issues as raised in this appeal. The appeal stands disposed of with the aforesaid directions and observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc/