

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

**Company Appeal (AT) (Insolvency) No. 565 of 2018**

**IN THE MATTER OF:**

**Mr. G.K. Badrinaraya Prasad**

**...Appellant**

**Vs.**

**Godrej Tyson Foods Ltd. & Anr.**

**...Respondents**

**Present: For Appellant: - Mr. M.A. Chinnasamy, Mr. MC  
Rubavalhi and Mr. V. Senthil Kumar, Advocates.**

**ORDER**

**20.09.2018**— This appeal has been preferred by the Appellant, Director of 'M/s. Bangs Resto Ventures Private Limited'- ('Corporate Debtor') a Company registered under the Companies Act, 1956, against the order dated 25<sup>th</sup> July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai, whereby and whereunder, application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) has been preferred by 'M/s. Godrej Tyson Foods Limited'- ('Operational Creditor') has been admitted.

2. The 'Operational Creditor' claimed an outstanding debt to the tune of Rs. 43,17,724/- which is inclusive of interest due for the period from 20<sup>th</sup> December, 2014 to 31<sup>st</sup> March, 2018.

3. Learned counsel for the Appellant submits that no notice was issued by the Adjudicating Authority before admitting the application under Section 9 of the 'I&B Code'. If notice would have been issued, the

‘Corporate Debtor’ would have pointed out that there was no due against the ‘Corporate Debtor’ and all invoices were raised against the Bank and not against the proprietary concern.

4. He further submits that the said proprietor who received the money intimated the ‘Operational Creditor’ not to send further product to the said Company and he will pay the dues.

5. From the record, it appears that the ‘Operational Creditor’ is a premier Poultry and Snacks manufacturer and engaged *inter alia* in the business of selling Fresh Chicken; Frozen Chicken and Ready to Cook Food. The ‘Corporate Debtor’ is *inter alia* engaged in the business of owing, operating and franchising the “Bangs Brand of Fried Chicken Restaurants” across India. The ‘Operational Creditor’ and the ‘Corporate Debtor’ have entered into Memorandum of Understanding (MoU) on 15<sup>th</sup> July, 2014 (enclosed at Page 56- Annexure-C) for sale of marinated chicken products by the ‘Operational Creditor’ to the ‘Corporate Debtor’.

6. In terms of the MoU, the ‘Corporate Debtor’ was to supply Marinade Powder to the ‘Operational Creditor’ and in turn, the ‘Operational Creditor’ would prepare the finished product and finally supply the product to the franchisee of the ‘Corporate Debtor’.

7. It is in this background, invoices were raised in favour of one or other franchisee which were supplied with the finished product at the instance of the 'Corporate Debtor'.

8. In view of the aforesaid admitted fact and the MoU, we hold that the Respondents come within the meaning of 'Operational Creditor' qua 'M/s. Bangs Resto Ventures Private Limited' (the 'Corporate Debtor'), who made a requisition for supply the food to its franchisee.

9. We find no merit in this appeal. It is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansilal Bhat)  
Member(Judicial)

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