

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 535 of 2018

IN THE MATTER OF:

Radius Infratel Pvt. Ltd.

...Appellant

Vs

Union Bank of India

....Respondent

Present:

For Appellant: Mr. Ankit, Representative.

**For Respondent: Mr. Rajiv S. Roy, Mr. Avrojoyoti Chatterjee,
Mr. Abhijit S. Roy, Ms. Jayasree Saha and
Mr. Prateek Kushwaha, Advocates.**

ORDER

13.11.2018: This appeal has been preferred by 'M/s Radius Infratel Pvt. Ltd.' (Corporate Debtor) against order dated 23rd July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, whereby and whereunder application under Section 7 preferred by 'Union Bank of India' (Financial Creditor) has been admitted, order of moratorium has been passed and Interim Resolution Professional has been appointed.

2. In "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*" – (2018)1 SCC 407, *in para 11*, the Hon'ble Supreme Court 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. As an appeal at the instance of the Corporate Debtor being not maintainable in view of the decision of the Hon’ble Supreme Court, on 14th September, 2018 we passed the following order:-

“O R D E R

14.09.2018 *This appeal has been filed by the ‘Corporate Debtor’, which is not maintainable in view of the decision of the Hon’ble Supreme Court in “Innoventive Industries Ltd. Vs. ICICI Bank and Ors., [(2018) 1 SCC 407] (Civil Appeals Nos. 8337-38 of 2017)” (Para 11). Learned counsel for the appellant prays for and allowed a week’s time to file application by one of the shareholder of the ‘Corporate Debtor’ for substituting him as appellant and to transpose ‘Radius Infratel Private Limited’ through ‘Resolution Professional’ as 2nd Respondent.*

In the meantime, the appellant may file affidavit to show that there was no 'debt due' or there was no 'default' as on the date of filing of the petition under Section 7. It may give specific date(s) and evidence in support of payment of quarterly dues both with regard to the 'Term Loan 1 and 2' up to the date of filing. If such affidavit is filed within a week, Mr. Rajiv S. Roy, learned counsel for the 'Financial Creditor' will file a reply within a week thereof and may specify the date of default with regard to the 'Term Loan 1 and 2' including the amount of default subject to order as may be passed in the petition for substitution.

Post the case 'for orders' on 9th October, 2018 along with petition for substitution, if any, filed in the meantime."

4. In spite of time allowed to the counsel for the Appellant no affidavit having filed nor any petition for substitution filed by any shareholder of the Corporate Debtor. In this background, on 9th October, 2018 we passed following order:-

ORDER

09.10.2018- *Learned counsel for the Appellant seeks and is allowed extension of time by one week to file application on behalf of one of the Shareholders of the 'Corporate Debtor' for substituting him as Appellant and to transpose 'Radius Infratel Private Limited' through 'Resolution Professional' as 2nd Respondent. He is also allowed extension of time by one week to file affidavit in terms of the interim order dated 14th September, 2018.*

The extension of time is granted as last and final opportunity.

In the event of substitution application and the affidavit, as aforesaid, being filed within the extended time, reply be filed on behalf of the 'Financial Creditor' within 10 days thereof.

Post the appeal 'for orders' on 13th November, 2018.

5. Today when the matter was taken up one Mr. Ankit, representative of the Corporate Debtor submits that the lawyer is appearing before the Debts Recovery Tribunal. However, we are not adjourning the case as even on appearance of the counsel we cannot entertain the appeal preferred by Corporate Debtor being not maintainable.

6. For the said reason, we dismiss the appeal being not maintainable in view of decision of Hon'ble Supreme Court in "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*" (Supra). However, this order will not come in the way of Shareholder/ Director of the Corporate Debtor to move an appeal in accordance with law, if not barred by limitation.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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