

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

**Company Appeal (AT) (Insolvency) No. 78 of 2018**

**IN THE MATTER OF:**

**Shree Ganesh Jewellery House (I) Ltd.**

**...Appellant**

**Vs.**

**Abhishek Stock Broking Services  
Pvt. Ltd. & Ors.**

**...Respondents**

**Present: For Appellant: - None.**

**For Respondents:- None.**

**ORDER**

**22.03.2018-** This appeal has been preferred by the Appellant- Shree Ganesh Jewellery House (I) Ltd. ('Corporate Debtor') against the order dated 12<sup>th</sup> February, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, whereby and whereunder application preferred by the Respondents- Abhishek Stock Broking Services Pvt. Ltd. and 3 Others ('Financial Creditors') under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been admitted, order of 'Moratorium' has been passed and 'Interim Resolution Professional' has been appointed with certain directions.

2. In the case of ***"Innoventive Industries Ltd. v. ICICI Bank– 2017***

Contd/-.....

**SCC OnLine SC 1025**", the Hon'ble Supreme Court held that an appeal under Section 61 by the 'Corporate Debtor' is not maintainable after its admission and observed as follows:

*"11. Having heard 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 law. Entrenched managements are no longer allowed to continue in management if they cannot pay their debts.”*

3. When the aforesaid fact was brought to the notice of the learned counsel for the Appellant, he prayed for time to file petition for substitution of Mr. Abhishek Kumar, Director of the ‘Corporate Debtor’ as Appellant in place of M/s. Shree Ganesh Jewellery House (I) Ltd. and to transpose M/s. Shree Ganesh Jewellery House (I) Ltd. through ‘Resolution Professional’ as the 5<sup>th</sup> Respondent. However, in spite of the time granted to the learned counsel for the Appellant on 7<sup>th</sup> March, 2018, till date no such application for substitution has been filed.

4. In the circumstances, as the appeal preferred by ‘Corporate

Debtor' through the (suspended) Board of Directors is not maintainable, we have no other option but to dismiss the appeal. The appeal is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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