

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

**Company Appeal (AT) (Insolvency) No. 713 of 2023**

**IN THE MATTER OF:**

**Knorr-Bremse India Pvt. Ltd.**

**...Appellant**

**Versus**

**Anand Prakash Garg**

**...Respondent**

**Present:**

**For Appellant** : **Mr. Arun Kathpalia, Sr. Advocate along with Mr. Vijayendra Pratap Singh, Mr. Arnab Ray, Mr. Chetan Chawla & Ms. Diksha Gupta, Advocates.**

**For Respondent** : **Mr. Abhijeet Sinha, Ms. Anannya Ghosh, Ms. Doel Bose & Ms. Mrinalini Mishra, Advocates.**

**ORDER**

**29.05.2023** This Appeal has been filed against the order dated 19.04.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench) passed in Company Petition (IB) No. 325/Chd/Hry/2022, by which the Adjudicating Authority has overruled the objection of the Corporate Debtor regarding the maintainability of Section 9 Application. In Para 11 of the order, the following has been observed :-

*“In view of the above facts, we hold that the present application is maintainable without expressing any opinion on the merits of the claims made in the said application. Since the respondent/corporate debtor is already appearing, there is no requirement for issuance of the notice. Learned counsel for the respondent/corporate debtor is directed to file reply, if any, be filed within three weeks after receipt of notice with a copy in advance to the counsel opposite. Rejoinder thereto, if*

*any, be filed one week thereafter, with a copy in advance to the counsel opposite. Matter be listed on 06.07.2023.”*

2. Shri Arun Kathpalia, Learned Counsel for the Appellant challenging the order submits that the Applicant i.e. Operational Creditor was not entitled for performance bonus which could not be an operational debt since this is a discretionary payment.

3. It is submitted that the Adjudicating Authority has made observations in Para 10 the effect that the operational debt has been proved.

4. We have considered the submissions of the Counsel for the Appellant and perused the record.

5. Observations made in Para 11 clearly indicate that the application has been made held maintainable without expressing any opinion on the merits of the claims made in the said application.

6. We are thus of the view that the Adjudicating Authority has not yet expressed any opinion with regard to operational debt as claimed by the Appellant. Whether the application filed by the Operational Creditor under Section 9 deserved to be admitted or not is the question which is still be gone into and decided by the Adjudicating Authority.

7. We are thus of the view that at this stage, no ground has been made out to entertain this Appeal. It is open for the Appellant to raise all issues of questions on merits of the claim of the Operational Creditor which may be considered and decided.

8. We make it clear that all the issues on the merits on the claim of the parties is left open.

9. Appellant may have further three weeks period for filing the Reply from today. Subject to above, the Appeal is dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Naresh Salecha]**  
**Member (Technical)**

*Sim/nn*