

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL****PRINCIPAL BENCH****NEW DELHI****COMPANY APPEAL (AT)(Ins) No.1167/2024**

(Arising out of judgement and order dated 30.04.2024 passed by the National Company Law Tribunal, Cuttack Bench in CP (IB)No.3/CB/2023)

**In the matter of:**

Culver Max Entertainment Pvt Ltd  
(formerly known as Sony Pictures Network India Pvt Ltd)  
4<sup>th</sup> Floor, Interface Building No.7  
Off Malad Link Road, Mumbai 400064 Appellant

Vs

Rechargekit Fintech Pvt Ltd  
Esplanade One Mall,  
Room No.725,  
7<sup>th</sup> Floor,  
Rasulgarh,  
Bhubneshwar,  
Khorda 751010, Odisha, India Respondent

For Appellant: Mr. Gaurav Pachnanda, Sr Advocate, Ms Nikita Jaitly, Ms Varsha, Mr. Abhyuday Mishra, Ms Ruby Singh Ahuja, Ms Kritika Sachdeva, Mr Varun Khanna, Advocates.

For Respondent: Mr Prashanto Sen, Sr Advocate, Mr. Nihit Nagpal, Ms Shuchita Chaubey, Mr Sayantan Chanda, Advocates.

**ORDER****HYBRID MODE**

**10.12.2025:** This appeal is filed under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 challenging the judgement and order dated 30.04.2024 passed in CP(IB) No.3/CB/2023. The Ld. NCLT has dismissed the application filed by the appellant under Section 9 of the Code on the ground that no proper

authorization to file an application under Section 9 of the IBC, was filed by the appellants alongwith the application under Section 9 before the Ld. NCLT.

2. It is argued that while dismissing the petition/application under Section 9 of the Code on ground of no **proper authorization** the Ld. NCLT went ahead and decided the application under Section 9 even on merits.

3. It is the submission of the appellant that once the Ld. NCLT had come to the conclusion that there was no proper authorization to file the petition under Section 9 of the Code the Ld. NCLT ought to have granted time/an opportunity to the appellant to file a fresh Board Resolution/authorization as provided under the proviso to Section 9(5)(ii) of the Code, instead of dismissing the application on maintainability. Section 9(5)(ii) of the Code is as under:-

**9.Application for initiation of corporate insolvency resolution process by operational creditor-**

*(1) to (5) xxxx*

*(i)xxx*

*(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if –*

*(a) the application made under sub-section (2) is incomplete;*

*(b) there has been payment of the unpaid operational debt;*

*(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;*

*(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or*

*(e) any disciplinary proceeding is pending against any proposed resolution professional:*

*Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the*

*applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.*

4. It was also the submission of the Learned counsel for the appellant that though the Ld. NCLT vide its impugned order has relied upon M/s Nibro Ltd Vs National Insurance Co Ltd AIR 1991 Delhi 25, but the said judgement in its para 26 has implied that even after the suit was instituted, no resolution was passed by the company ratifying the action and that no such decision of Board of Directors was placed on record in that case. It was in those circumstances the Court held that there was no evidence that Mr. G Jhajharia had any authority to institute the suit. It was the submission of the learned counsel for the appellant that in Nibro Ltd, the Court was of the view had the said resolution ratifying the action if was filed, the proceedings ought not to have been dismissed.

5. In any case in Tek Travels Pvt Ltd Vs Altius Travels Pvt Ltd 2021 SCC OnLine NCLAT 351 the Court held as follows:

*18. Thus it is clear that if Applications filed under Section 9 of the Code is found incomplete, then Adjudicating Authority in compliance of proviso of Section 9(5)(ii)(a) of the Code is obliged to issue notice on the applicant and provide an opportunity to rectify that the defects within seven days, failing which petition can be rejected.*

*22. It is pertinent to mention that the Insolvency and Bankruptcy Code is a self contained Code. It has made provision for providing an opportunity to rectify the defects of application, and in any position it can not be denied.*

6. Thus per Teck Travels Pvt Ltd (Supra) it was the duty of the Ld. NCLT to at least put the appellant to notice requiring him to rectify the defect in the

application and admittedly the said opportunity was not given in the present case. Hence the impugned order suffers from illegality and needs to be set aside.

7. The learned counsel for the Respondent agrees that per proviso to Section 9(5)(ii)(a), let there be compliance of the said proviso. In the circumstances without expressing any opinion on the merit of the appeal, we set aside the impugned order and remand the matter to the Ld. NCLT to provide an opportunity to appellant to cure the defects in authorization and thereafter, the matter may be heard on merits. This exercise be done preferably within two months.

8. All the rights and contentions of the parties are kept open.

**(Justice Yogesh Khanna)**  
**Member (Judicial)**

**(Mr. Ajai Das Mehrotra)**  
**Member (Technical)**

**BM**