

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI

COURT NO.III

(IB)-235(ND)/2017

In the matter of :

M/s. Nityanand Singh & Co.

....PETITIONER

Vs.

M/s. Ferrous Infrastructure (P) Ltd.

.. RESPONDENT

SECTION :

Under Section 9 of IBC Code, 2016

Order delivered on 28.09.2017

Coram :

R. VARADHARAJAN,
Hon'ble Member (Judicial)

For the Petitioner : Mr. Nityanand Singh, Compay Secretary/
Party in person.

For the Respondent : -

ORDER

The Operational Creditor has filed his application against the Corporate Debtor under the provisions of Insolvency & Bankruptcy Code, 2016 (for brevity IBC, 2016) on the basis of services rendered by the Operational Creditor to the Corporate Debtor for which a sum of Rs.1,83,000/- is claimed as due and payable by the Corporate Debtor.

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The Operational Creditor has reflected in the prescribed Form filed under the Rules framed under the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'AAA' Rules) that he has rendered services of Company Secretary and in the course of his profession has rendered the same to the Corporate Debtor. The payment of the amount due by the Corporate Debtor in view of the services rendered and bills raised between 31.3.2016 to 31.12.2016 aggregating in all to a total sum of Rs.2,29,700/- and that after giving a credit of Rs.45,800/- paid by the Corporate Debtor against the said Bills, the balance sum payable stands at Rs.1,83,900/- which amount it is stated to be the amount in default.

Keeping in view the provisions of IBC Code, 2016, it is stated that the demand notices as contemplated under Section 8 read with AAA Rules, have been sent to the Corporate Debtor on 24th May, 2017 to its Registered office as well as the Notice of demand has been sent vide E-mail id of the Director as provided in the Master Data maintained by the Ministry of Company Affairs with respect to the Corporate Debtor.

Despite the service of the said notice of demand, the Operational Creditor has stated that no reply has been received either disputing the amount in default

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or the payments made of the sum due as evidenced by the Bank Certificate issued by the Operational Creditor and, hence, in the circumstances, this application has been filed under the provisions of IBC, 2016 invoking the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

The above application as filed by the Operational Creditor was listed before this Tribunal on 01.8.2017 wherein the petitioner was directed to file the proof of service of the application on the Corporate Debtor within a period of one week as well as for any other compliance including the Certificate from the Financial Institution for unpaid liabilities as contemplated under the provisions of IBC Code, 2016 to be filed.

On 07.8.2017, the petitioner had filed an affidavit of proof of service which discloses that the notice sent by the Operational Creditor to the Corporate Debtor has been returned unserved with an endorsement "No such person".

The Tracking report in relation to the Receipt number given RD-643515676IN dated 22.7.2017 shows that even though item was admitted to be sent, however, due to insufficient address was not able to be delivered.


The same seems to be the case in relation to the subsequent effort of the Operational Creditor in serving the Corporate Debtor as evidenced from the returned cover with endorsement "No such person".

Probably, in view of the non-service upon the Corporate Debtor none appeared at the time of hearing on 09.8.2017 as well as on 22.8.2017. The petitioner represented notice of the application was also taken through e-mail id as reflected in the Master Data of the Corporate Debtor maintained by the MCA and in the circumstances, it should be deemed to be a service which has been effected on the Corporate Debtor.

It is also seen that based on the directions of this Tribunal, the Operational Creditor has also filed the Balance Sheet of the Corporate Debtor for the year ending 31.3.2016 which shows that the Company is having an active business.

We have carefully taken into consideration the documents filed by the Operational Creditor including the Certificate of the Bank of the Operational Creditor to the effect that no payment has been received in respect of Rs.1,83,900/- which is claimed to be the amount in default.

However, taking into the consideration the provisions of Rule 5 & 6 of the AAA Rule, 2016 wherein even though notice of demand as mandated under Section 8 of IBC, 2016 can be served as per any of the two modes prescribed under Rule 5 (2) (a) & (b) of IBC, 2016 in relation to the notice of application which has been filed before this Tribunal it is required to be served by the Operational Creditor at the registered office of the Corporate Debtor by registered post or 'Speed Post'. Thus, taking into consideration the decision rendered by Hon'ble NCLAT in "Innoventive Industries Ltd vs. ICICI Bank and Another, Company Appeal (A) (Insolvency) No.1 and 2 of 2017, we find that the said Rule has not been complied with and in the circumstances, due to non-service of notice of the application, we are constrained to dismiss this petition seeking to invoke the CIRP as against the Corporate Debtor without costs. However, the above dismissal of the application will not prejudice the applicant in any way from prosecuting his claim against the Corporate Debtor in any other Forum of his choice as this Tribunal has not gone into the merits of the application.


(R. VARADHARAJAN)
MEMBER (JUDICIAL)