

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-319
IB-1874/ND/2019

IN THE MATTER OF:

M/s. Anurautan Textiles Pvt. Ltd.

Vs

M/s. Sarveshwar Creations Pvt. Ltd.

....Applicant

....Respondent

SECTION

Under Section 9 of IBC, 2016

Order delivered on 15.11.2019

CORAM:

SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

PRESENT:

For the Applicant

: Adv. C.S. Gupta

For the Respondent

: Adv. Prateek Gautam with Respondent in Person

ORDER

An application on behalf of the Corporate Debtor has been filed praying to set aside the ex-parte order passed in IB-1874/ND/2019. Heard the Ld. Counsels for the CD as well as the petitioner.

Ld. Counsel for the CD submitted that since CD had not received the notice. Hence he could not appear on the date fixed. He further submitted that he came to know about the order dated 10.10.19 only on previous date i.e. 09.10.2019, and on that day CD appeared and seeks time to file the appropriate application for setting aside the ex-parte order passed by this adjudicating authority. He further submitted that the CD is also ready to settle the matter with the Operational Creditor.

On the other hand Ld. Counsel for OC opposed the prayer. He submits that he had sent notice to the CD by registered post on the registered address of CD as well as on e-mail and the affidavit of service has been filed regarding service of notice.

Upon hearing the parties and on perusal of the averments made in the application as well as in the affidavit regarding the service of notice, this adjudicating authority finds that the OC has enclosed the current status of tracking report which shows notice though dispatched for delivery, but nowhere in the tracking report there is any evidence to show that it was delivered on the address of CD. As far as the contention of the Ld. Counsel for the OC is concerned, it states that the same was sent through the e-mail

also at this stage, I would like to Quote Rule-5 (a) of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules:-

“Demand notice by operational creditor.—

(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely.- (a) a demand notice in Form 3; or (b) a copy of an invoice attached with a notice in Form 4.

(2) The demand notice or the copy of the invoice demanding payment referred to in subsection (2) of section 8 of the Code, may be delivered to the corporate debtor, 1 Published in the Gazette of India, Extra., Part II, Sec.3, No. 828 (E), dated 30th Nov., 2016 (w.e.f. 01.12.2016). (a) at the registered office by hand, registered post or speed post with acknowledgement due; or (b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.

(3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any.”

On perusal of that provision this adjudicating authority finds that the OC failed to convince that the notice was sent on the e-mail ID of whole time director or designated partner.

Under such circumstances the contention raised by the Ld. Counsel for the OC that the notice was delivered upon the CD but he did not appear on the date fixed by the adjudicating authority is not liable to accept.

After considering the aforesaid facts, this adjudicating authority, think proper to recall the order dated 20.09.2019 and accordingly, hereby recalls the order dated 20.09.2019 by which the application was proceeded ex-parte bearing subject to payment of cost of Rs. 10,000/- to be deposited in Prime Minister Relief Fund. Deposit of cost is the condition precedent. The CD is also given liberty to file the reply within one week from today. Matter stands disposed off under the provisions of law. List on 27.11.2019.

sd/-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

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