

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

Company Application No.418/KB/2017
CP No.181/KB/2017

In the matter of:

Ajudhia Distributors Pvt. Ltd.

.....Corporate Debtor

-Versus-

Radico Khaitan Ltd.

.....Operational Creditor

Order Delivered on 9th October 2017

Coram:

Vijai Pratap Singh, Member (J)

Jinan K.R., Member (J)

For the Applicant : Mr. Arun Kumar Khandelia, Resolution Professional

For Operational Creditor : 1. Mr. Arnab Dutta, Advocate
2. Ms. Priyanka Chakraborty, Advocate

ORDER

Per Jinan K.R., Member (J)

This is an application filed u/s 70 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to I & B Code) praying for taking action against the corporate debtor for its failure to co-operate with Resolution Professional (in short, RP) and for enabling him to complete resolution plan within the stipulated period.

2. The learned RP filed an application under Sec. 19(2) and 19(3) of the I & B Code, 2016 complaining that the corporate debtor failed to co-operate with him in supplying requisite information for enabling him to initiate Corporate Insolvency Resolution Process against the corporate debtor. Upon filing the above referred application this Tribunal issued direction to the corporate debtor

vide order dated 30.05.2017 to co-operate with the IRP failing which action shall be initiated against the Corporate Debtor. While so in a meeting convened by the COC on 24.07.2017 name of IRP was confirmed as RP. After confirmation of IRP as RP the instant application U/s.70 of I & B Code, 2016 for initiating action against the Corporate debtor alleging non-cooperation from the side of Corporate Debtor and its failure in attending meetings irrespective of service of notice to the Corporate debtor.

3. The Learned RP contents that despite service of this Tribunal's direction to the corporate debtor, it failed to extend their co-operation to the RP and that in spite of repeated notice to attend meeting of the COC the corporate debtor failed to attend the meeting and therefore, he is not able to carry out his duties and responsibilities as RP. Upon the said contentions he prays for initiating actions against the corporate debtor U/s. 70 of I & B Code, 2016. According to the learned RP the corporate debtor committed an offence punishable U/S.70 of I&B Code,2016 and therefore liable to be punished accordingly.

4. Heard the Learned RP and the Learned Counsel for the Operational Creditor. Corporate Debtor remained absent before this Tribunal despite service of notice of the application filed by the RP.

5. Upon hearing the Learned RP and the Learned Counsel for the Operational Creditor and going through the contentions narrated by the learned RP in the application it appears to us that corporate debtor deserve punishment as per section 70 of I & B Code, 2016. As directed learned RP attempted to serve notice by speed post and by E-mail and filed affidavit of service. A perusal of the affidavit and supporting documents proving service of notice and copy of this Tribunal's order it is learned that notice by E-mail has been sent and delivered to the director of the corporate debtor but track report shows that attempt to

serve to the known address was failed due to reasons not brought to the notice of this Tribunal for want of examination of the Post Man who attempted to serve it. However, a perusal of the track reports indicates that Post Man served intimation to the address and that the door of the given address was locked. The legitimate inference to be drawn is that the corporate debtor is aware of the proceedings initiated against it and deliberately disobeying the directions of this Tribunal and failed to co-operate with RP. Prima facie, we are satisfied that the director of the corporate debtor is guilty of committing the offence punishable under section 70 of I & B Code, 2016. However before imposing punishment it appears to us that a show cause notice to be issued to him to satisfy that inaction on the side of the corporate debtor not comes under the purview of the Proviso to section 70 of I & B Code, 2016.

6. In view of the above said discussion, we are issuing show cause notice to the Director Shri. Mohit Korpall and to the corporate debtor directing them to show cause why not punishment under section 70 of I & B, Code, 2016 is to be imposed on them within one week of the receipt of this notice.

List on 23-10-2017

Sd/- 9/10/17
Vijai Pratap Singh,
Member (J)

Sd/- 9/10/17
Jinan K.R.,
Member (J)

Signed on 9th October 2017