

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1639 of 2023

[Arising out of the Impugned Order dated 27.09.2023 passed by the National Company Law Tribunal, Division Bench (Special) Court No. I Kolkata in C.P.(IB) No. 329(KB)2022]

In the matter of:

Gurushankar Raman

Suspended Director and Shareholder of

M/s. Amritpur Tea Company Limited

Gate No. 5 Old No. 16 A & C, New No. 18 A & C,

Director's Colony, Kodambakkam, Chennai-600024.

... Appellant

Versus

1. City Union Bank Limited (Financial Creditor)

149, T.S.R. Big Street, Kumbakonam,
Tanjore, Tamil Nadu-612001.

2. Amritapur Tea Company Ltd.

Through its Insolvency Resolution Professional,
Mr. Soumitra Lahiri
Address: Flat 14 D & E, Tower 32,
Genexxy Valley, Joka, Diamond Harbour Road,
Kolkata, West Bengal-700104.

Also at:

Raipur Tea Estate, Post Office-
Rangdhamali, Jalpaiguri,
West Bengal 735121.

... Respondents

Present:

For Appellant : Mr. Gaurav Mitra, Mr. Shantanu Singh, Mr. Ravi Sehgal, Lavanya Pathak, Advocates

For Respondents : Mr. Sumesh Dhawan, Ms. Vatsala Kak, Mr. Shaurya Shyam, Mr. Sagar Thakkar, Advocates for R-1.
Mr. Vikram Wadehra, Advocate for R-2.

J U D G M E N T
(Hybrid Mode)

[Per: Ajai Das Mehrotra, Member (Technical)]

This Appeal has been filed by Mr. Gurushankar Raman, Suspended Director and shareholder of M/s. Amritpur Tea Company Ltd, herein after referred to as the Appellant/Corporate Debtor against the order dated 27.09.2023 passed by the National Company Law Tribunal, Division Bench (Special) Court No. I, Kolkata in C.P.(IB) No. 329(KB)2022 wherein application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IBC, 2016) by City Union Bank Ltd, the Financial Creditor was allowed admitting the Corporate Debtor in corporate insolvency resolution process (hereinafter called 'CIRP').

2. Brief facts of this case, as narrated in the Order of learned NCLT, are that the Corporate Debtor was incorporated on January 10, 1913. The Corporate Debtor had taken loan from the Financial Creditor and the outstanding amount as on September 1, 2022 was Rs.12,60,90,830/-. The Corporate Debtor was declared a non-performing asset (NPA) by the Financial Creditor on December, 31, 2019 as per the record of default mentioned in Form - D of National e-Governance Services Ltd. (hereinafter called 'NeSL'). The documents relating to agreement of loan, hypothecation etc. in support of the credit given by the Financial Creditor to the Corporate Debtor were filed with the learned NCLT. The learned NCLT admitted the Corporate Debtor in CIRP and appointed Mr. Soumitra Lahiri as the Interim Resolution Professional.

3. In his oral and written submissions, the learned Counsel for the Appellant submitted that no Notice for hearing was served on the Corporate Debtor and Corporate Debtor was in the dark regarding the proceedings. The Corporate Debtor was wrongfully set *ex parte* by the Adjudicating Authority. It was submitted that the learned NCLT vide Order dated 13th June, 2023 had directed service of Notice through two newspaper publications, one in vernacular language and one in English widely circulated in the State of West Bengal. It was submitted that the newspaper editions in which the Notice was published were being published from Kolkata, but not in Siliguri. The learned Counsel for the Appellant filed Affidavit in support of his contentions that separate editions of these papers are published from Siliguri which are circulated in Jalpaiguri, where the registered office of the Corporate Debtor is situated. The learned Counsel adverted to Rule 35 of NCLT Rules – 2016. The said Rule is reproduced below for ready reference:-

“35. Advertisement detailing petition.– (1) *Where any application, petition or reference is required to be advertised, it shall, unless the Tribunal otherwise orders, or these rules otherwise provide, be advertised in Form NCLT-3A, not less than fourteen days before the date fixed for hearing, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situate, and at least once in English language in an English newspaper circulating in that district.*

(2) Every such advertisement shall state;-

(a) the date on which the application, petition or reference was presented;

(b) the name and address of the applicant, petitioner and his authorised representative, if any;

(c) the nature and substance of application, petition or reference;

(d) the date fixed for hearing;

(e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition or reference at the hearing shall send a notice of his intention to the concerned Bench and the petitioner or his authorised representative, if any, indicating the nature of interest and grounds of opposition so as to reach him not later than two days previous to the day fixed for hearing.

(3) Where the advertisement is being given by the company, then the same may also be placed on the website of the company, if any.

(4) An affidavit shall be filed to the Tribunal, not less than three days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served:

Provided that the affidavit shall be accompanied with such proof of advertisement or of the service, as may be available.

(5) Where the requirements of this rule or the direction of the Tribunal, as regards the advertisement and service of petition, are not complied with, the Tribunal may either dismiss the petition or give such further directions as it thinks fit.

(6) The Tribunal may, if it thinks fit, and upon an application being made by the party, may dispense with any advertisement required to be published under this rule.”

4. Learned Counsel for the Appellant submitted that since the newspapers were not being circulated in the District of Jalpaiguri, the substituted service through publication was not proper. The second defence taken by the Corporate Debtor is that the loan was disbursed to the Corporate Debtor in three tranches and the third tranche of Rs.1,50,00,000/- was disbursed on 30th December, 2019 and the bank, on the very next day, i.e. 31st December, 2019 declared the loan facility as “non-performing asset” (NPA) which on the face of it appears incorrect as NPA was declared on the very next day of sanction of new tranche of loan.

5. In his oral and written submissions, the Learned Counsel for the Respondent No. 1 (Financial Creditor-City Union Bank Ltd.) submitted that the Corporate Debtor was liable to pay Rs. 12,60,90,830/- as on 01.09.2022 towards loan disbursed in the period from 27.07.2015 to 30.12.2019, including interest due thereon. It was submitted that the Appellant repeatedly defaulted and the loan facility was declared as NPA on 31.12.2019, as instead of regularising the earlier loan facility it utilised the 3rd facility to make part payment of the previous loans.

6. The details of the loan disbursed are as under:

S. No.	Account Number	Disbursed Amount	Date Of Disbursement	Default Amount With Interest [As On 01.09.2022]
1.	512120020005361	4,00,00,000/- 70,00,000/-	27.07.2015 30.12.2018	5,05,28,894/-
2.	501812080011182	6,00,00,000/-	29.06.2015	3,66,46,975/-

3.	501812080059393	1,50,00,000/-	30.12.2019	1,50,02,875/-
TOTAL				12,60,90,830/-

7. It was submitted that the Appellant has not denied that it has defaulted in the payment of dues. There are proceedings against the Corporate Debtor under SARFAESI Act, 2002 for taking over the symbolic possession of the secured assets of the Corporate Debtor and even at that stage no dispute was ever raised by the Corporate Debtor. The Corporate Debtor had not raised any dispute even before NeSL and the Record of Default i.e., the record maintained with the Information Utility NeSL, reflects that various intimations were sent regarding the default through email, which were opened as well as authenticated by the Corporate Debtor, however, no dispute was ever raised to the existence of default.

8. It was submitted that Court notice has been duly delivered and served on the Corporate Debtor through both mode, namely, Speed Post and Email issued by the Registry of the Ld. NCLT itself and there cannot be any dispute qua the service of notice of Section 7 petition. It was submitted that the Corporate Debtor has deliberately not joined the proceedings before the Ld. NCLT, and is making frivolous attempts to mislead and evade its liability towards the Respondent No.

1. It was submitted that publication in newspaper was in addition to the notice which was duly served and any frivolous controversy regarding it cannot deny the fact that service was duly affected, both through Speed Post and Email on the Corporate Debtor. It was submitted that even during the DRT proceedings and before this Appellate Tribunal, the Appellant and the Corporate Debtor had

failed to say that they are willing to pay the debt, even when specific queries were raised regarding it.

9. We have heard the Learned Counsels for both the sides and have perused the documents.

10. In its order dated 28.12.2022, the Ld. NCLT had directed Registry to issue notice to the Respondents by Speed Post and Email and place tracking information on record. Further in its order dated 31.01.2023, the Ld. NCLT has recorded that notice was issued to the Corporate Debtor and has been served upon them. However, as none had appeared for the Corporate Debtor, the Registry was directed to issue fresh notice and petitioners were also directed to take the notice for service and file a service affidavit. Since the Respondent-Corporate Debtor was not appearing, an I.A. was filed by the Financial Creditor requesting for permission to publish service of notice through two newspapers which was allowed on 13th June, 2023 by the Ld. NCLT. The publication was done in the two newspapers, one in vernacular language and one in English in dailies widely circulated in the State of West Bengal. An affidavit was filed by the petitioner before the Ld. NCLT for placing on record the copy of publication made in two newspapers, namely, "The Statesman" and "Aajkal" for effecting service upon the Corporate Debtor. Since even after publication, nobody appeared for the Corporate Debtor, the Corporate Debtor was set ex-parte vide order dated 09.08.2023 by the Ld. NCLT.

11. We have gone through the records and find that service through email and by Speed Post has been made at the declared address of the Corporate

Debtor and the relevant documents have been filed, which are at page 502-503 of the Affidavit in Compliance filed on 29.07.2024.

12. We find that NeSL had repeatedly informed the Corporate Debtor about the outstanding debt and had sent emails at its registered email ID- raipurte@gmail.com. The said email ID is given in the master data of the company maintained with the Ministry of Corporate Affairs and evidence of the same has been submitted at page 20 of reply affidavit by the Respondent No. 1. The Learned Counsel for the Respondent has also informed that the resolution plan for the Corporate Debtor has already been approved by the Ld. NCLT vide its order dated 20.12.2024.

13. We find that at no stage the Corporate Debtor had denied its liability to pay to the Respondent bank. The feeble argument raised is that the publication of notice was in Kolkata editions of the newspaper, which are not readily available in Jalpaiguri, where the registered office of the Corporate Debtor is situated. However, we find that advance notice of the application has been served on the Corporate Debtor. Further, the notice issued by the Registry through Speed Post and Email has been duly served upon the Corporate Debtor. The Corporate Debtor was admittedly served on earlier occasions and since none appeared on its behalf, it was only as an abundant caution the service by publication was ordered. Now the Corporate Debtor cannot say that earlier service was invalid or withdrawn because of reservice being ordered. We also find that the debt and default are recorded in the records of the Information Utility (NeSL). The record of NeSL has been filed along with Affidavit in Compliance filed on 29.07.2024 and is available at page 171 to 177. According to the records submitted, it is

reflecting that intimations were sent by NeSL to the Corporate Debtor at its registered email ID- raipurte@gmail.com on 07.09.2022 at 09:49:16 AM, 07.09.2022 at 09:52:02 AM, 12.09.2022 at 14:14:45 PM, 12.09.2022 at 14:19:59 PM, 17.09.2022 at 18:59:27 PM, 17.09.2022 at 19:02:26 PM, 24.09.2022 at 08:07:20 AM and 24.09.2022 at 08:10:35 AM. All the emails were delivered and opened by the addressee. However, the debt has been authenticated by NeSL with the description “default submission” indicating that no response had come from the Corporate Debtor. Apparently, it is the Corporate Debtor who has chosen not to join the proceedings. Even during the appeal proceedings, on query, the Corporate Debtor was unable to commit to the repayment of debt. This case meets all the ingredients required for admission under Section 7 of the IBC, 2016, including existence of debt, failure to repay the debt leading to default and application filed under Section 7 within the limitation. We find no reason to interfere in the orders of Ld. NCLT in admitting the Corporate Debtor under CIRP. We find no merits in the present appeal, and it is accordingly dismissed. All pending application(s) are closed. No order as to costs.

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

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

***Place: New Delhi
Dated: 06.02.2025
Ram N.***