

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 512 of 2025

&
I.A. No. 1946 of 2025

[Arising out of order dated 17.02.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi, Special Bench) in (IB)-
680(PB)/2024]

IN THE MATTER OF:

Akhilesh Kumar

Member of Suspended Board of Directors,
Corporate Debtor/ Our Co. Infrastructure
Developers Pvt. Ltd.
R/O.: 52E/ 1404, Gali No. 52,
Molarband Extension, Molar Band,
Delhi 110044
Email: Team.ocid07@gmail.com

...Appellant

Versus

1. Bank of Baroda

Through its Authorised Officer,
Registered Office at
4th Floor, Rajendra Bhawan,
Rajendra Place, New Delhi-110008
Email: ARMDEL@bankofbaroda.com

...Respondent No. 1

2. Our Co. Infrastructure Developers Pvt. Ltd.

Through Interim Resolution Professional
Office at: EWS/DDA Block-A,
Flat No. 708, DLF Capital Greens,
Shivaji Marg, Moti Nagar,
Karampura, West Delhi,
New Delhi -110015.
Email: ca.mittalabhl@gmail.com

...Respondent No. 2

Present:

For Appellant : Mr. Mohit Chaudhary and Mr. Raghav Dikshit,
Advocates.

For Respondents : Mr. Abhindra Maheshwari, Advocate for IRP.

**Mr. Sougat Sinha, Ms. R. Gayathri Manasa and
Mr. Navneet Kumar, Advocates for BoB.**

J U D G M E N T

ASHOK BHUSHAN, J.

I.A. No. 1946/2025

1. Sufficient cause has been shown for condonation of 3 days delay in filing of the Appeal.

Delay condoned.

Comp. App. (AT) (Ins.) No. 512/2025

1. This appeal by a suspended director of the corporate debtor has been filed challenging the order dated 17.02.2025 passed by the adjudicating authority (National Company Law Tribunal, New Delhi, Special Bench), admitting section 7 application filed by the Bank of Baroda (BoB).

2. Brief facts giving rise to this appeal are:

- i. BoB sanctioned a credit facility on 03.09.2024 to the corporate debtor, Our Company Infrastructure Developers Private Limited.
- ii. On 31.05.2019, corporate debtor defaulted in loan repayment. On 31.08.2019, the accounts of the corporate debtor was classified as NPA.
- iii. Notice under Section 13(2) of the SARFAESI Act was issued.
- iv. On 21.09.2019 default amount of ₹28,79,55,488/- was outstanding as on 31.08.2019.

- v. BoB has also filed an O.A. No.568/2020 before the Debt Recovery Tribunal (DRT) Delhi.
- vi. 20.07.2019 Presiding Officer issued notice and passed a restraining order.
- vii. BoB filed Section 7 application on 28.09.2024, claiming total amount of default of ₹49,14,07,632/-.
- viii. On 14.10.2024, adjudicating authority issued notice to the corporate debtor.
- ix. BoB filed an affidavit of service on 14.11.2024 stating that notice has been served on the corporate debtor. In spite of service of notice on the corporate debtor, no one appeared on behalf of the corporate debtor.
- x. Adjudicating Authority proceeded to hear the Section 7 application and by impugned order dated 17.02.2025, admitted section 7 application. Aggrieved by the order passed by the adjudicating authority, admitting section 7 application, this appeal has been filed.

3. We have heard learned counsel for the appellant as well as learned counsel appearing on behalf of the BoB.

4. Learned counsel for the appellant submits that adjudicating authority has passed the order admitting Section 7 application without service of notice on the appellant. It is submitted that the affidavit of service which has been filed by the appellant dated 14.11.2024, indicates that service of notice was served only by email. Learned counsel for the appellant contend that service of notice on the corporate debtor is not in accordance with Rule 38 of the *Comp. App. (AT) (Ins.) No. 512 of 2025 & I.A. No. 1946 of 2025*

NCLT Rules, 2016. It is submitted that service by email has to be on the address as given by a petition or application or in reply by the corporate debtor. In the present case, corporate debtor, having not filed any petition, application or reply, service by email could not have been completed. Learned counsel for the appellant further submitted that BoB by letter dated 15.09.2020 had given its consent to HDFC Bank to proceed ahead to exercise the rights of both the secured creditors, i.e., BoB and HDFC Bank, under sub-Section (9) of Section 13 of SARFAESI Act.

5. Learned counsel for the respondent refuting the submissions of the counsel for the appellant submits that financial creditor had taken steps of service on the corporate debtor both by email and physically. Two affidavits of service dated 14.11.2024 were filed one which has been brought on the record by the appellant as Annexure A-5 and another affidavit was filed on the same date stating that copy of notice along with copy of petition along with the order dated 14.10.2024 of the Tribunal was also sent by hand to the registered office address of the corporate debtor on the address, as appearing in the records of financial creditor report of the service agency has been filed along with the affidavit, where it was stated that occupants of the addressee had not allowed entry. The photograph of the place visited was also filed.

6. Learned counsel for the respondent further submits that corporate debtor was well aware of the proceeding and has approached the financial creditor for settlement also. It is submitted that corporate debtor was well aware of the proceeding initiated against a corporate debtor and deliberately avoided to appear in the Court. Adjudicating authority after giving sufficient

opportunity to the corporate debtor has proceeded to pass order finding debt and default. The financial creditor has also filed NeSL Report, proving the debt and default.

7. We have considered the submissions of counsel for the appellant and perused the records.

8. Adjudicating authority on 14.10.2024 issued an order, by paragraph 8 of the order notice was directed to be served in following modes. Paragraphs 8 & 9 of the order dated 14.10.2024, are as follows:

“8. This Notice to be sent by the Petitioner/Financial Creditor under NCLT Rules, 2016 Form-5 through the following modes:-

i. By way of an email to the registered email of. the Corporate Debtor available with the petitioner.

ii. By way of an email to the CD email address registered with the MCA.

iii. Service by way of Dasti within three days from today. iv. Proof of Service in any one of the above forms filed by way of an affidavit before the next date of hearing.

9. On receipt of this notice, the Corporate Debtor is directed to file the reply within 7 days. On the next date of hearing the Corporate Debtor should appear either himself or through Counsel / Authorised Representative with proper Vakalatnama / letter of authorisation along with the reply, failing which it shall be deemed that the Corporate Debtor does not wish to file the reply to the Section 7 Petition and the matter will be heard and decided on merits.”

9. In pursuance of the order of the adjudicating authority, notice was served by email on the email address of the corporate debtor which appeared in MCA records. Email was sent both on 24.10.2024 and 14.11.2024. Email dated 24.10.2024 is part of the affidavit of service filed by the financial

creditor, which is brought on record as Annexure A-5. Email dated 24.10.2024 is as follows:

“--- On Thu, 24 Oct 2024 16:19:08 + 0530 sougat.sinha@arha-legal.com wrote---

Dear Sir/Madam,

Kind attention: Our Co Infrastructure Developers Private Limited through its Director;

The above mentioned Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 was listed before the Hon'ble Adjudicating Authority NCLT Principal Bench on 14.10.2024. The Hon'ble Adjudicating Authority directed service of notice on the Corporate Debtor indicating that reply should be filed within 7 days and that no further time would be granted for filing the reply.

Take notice that the above matter is listed on 04.11.2024 and you are hereby notified to file your reply within 7 days and appear before Court No. 1 NCLT Principal Bench on the said date. Kindly take note that no further time shall be allowed as mentioned in the Order dated 14.11.2024.

A copy of Notice under Rule 3773,8 of the NCLT Rules, 2016, with copy Petition (Two Volumes containing all annexures -322 pages) along with Copy of Order dated 14.10.2024 are enclosed with this email. A copy of this email shall be filed: as proof of compliance of Order dated 14.10.2024.

The above documents are: also; enclosed vide link below.

Notice along with copy of Petition two volumer and copy of Order dated 14.10.2024

Thanking you.

Kind: Regards,

Counsel for the Petitioner

Sougat Sinha Advocate

MCI Arb (UK), LLM (Lon.), LLB (DU), FCS

Registered Insolvency Professional

Artha, Advocates & Legal Advisors
C-4 Basement, Nizamuddin East,
New Delhi-110013

Mobile: 9212173310
www.artha-legal.com

10. The matter was listed before the adjudicating authority again on 05.11.2024. Matter was again fixed for 26.11.2024 and second email on 14.11.2024 was also sent to the corporate debtor which is part of Annexure A-5, which email is as follows:

“Re: CP IB 680 (PB) 2024_Bank of Baroda vs Our Co Infrastructure Developers Pvt Ltd_Notice of Hearing

Me sougat.sinha@artha-legal.com

Thu, 14 Nov 2024 4:41:14 PM + 0530

To "ourcompanyinfra" ourcompanyinfra@gmail.com

CC "info" info@artha-legal.com

Dear Sir/Madam,

Kind attention; Our Co Infrastructure Developers Private Limited through its Director;

The above mentioned Petition (i.e. CP IB 680: (PB) 2024) under Section 7 of the Insolvency and Bankruptcy Code, 2016 was listed before the Hon'ble; Adjudicating;;Authority: NCLT Principal Bench on 14.10.2024 and 05.11.2024. The Hon'ble Adjudicating Authority directed service of notice on the Corporate Debtor indicating that reply should be filed within 7 days and that no further time would be granted for filing the reply.

Take notice that the above matter is listed on 26.11.2024 and you are: hereby notified to file your reply within 7 days and appear before Court No. 1 NCLT Principal Bench on the said date. Kindly take note that.no further time shall be allowed as mentioned in the Order dated 14.11.2024.

A copy of Notice under Rule 37/38 of the NCLT Rules, 2016, with copy Petition (Two Volumes containing all annexures – 322 pages) along with Copy of Order dated 14.10.2024 and Order dated 05.11.2024 are enclosed with this email. A copy of this email shall be filed as proof of compliance of Order dated 14.10.2024 and Order dated 05.11.2024.

The above documents are attached with this email.

Thanking you.

Kind Regards,

Counsel for the Petitioner

Kind Regards,

Sougat Sinha Advocate

Artha, Advocates & Legal Advisors:

C-4 Basement, Nizannuddin East,

New Delhi-110013

Mobile: 9212173310

www.artha-legal.com

11. Learned counsel for the appellant contended that service has not been made as per Rule 38 of the NCLT Rules, 2016. Rule 38(1) & (2) of NCLT Rules, 2016 provides as follows:

“38. Service of Notices and processes.-

(1) Any notice or process to be issued by the Tribunal may be served by post or by courier at the e-mail address as provided in the petition or application or in the reply;

(2) The notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal; –

(a) by hand delivery through a process server or respective authorised representative;

(b) by registered post or speed post with acknowledgment due or by courier ; or

(c) service by the party himself.

Explanation- For the purposes of sub-rules (1) and (2), the term “courier” means a person or agency which delivers the document and provides proof of its delivery.”

12. Rule 38(1) clearly provides that notice or process to be issued by Tribunal, maybe served by post or at the email address as provided in the petition or the application or in reply. The reference of the email address as occurring in Rule 38(1) clearly means the email address as provided in the petition.

13. Learned counsel for the appellant sought to contend that what is referred in Rule 38(1) means petition or application or reply which means that petition, application and reply filed by corporate debtor. In the present case, no application, petition or reply has been filed, the service cannot be affected under Rule 38(1).

14. We have already extracted the order passed by this Tribunal on 14.10.2024, by which paragraph 8, the Court has directed for service in any of the modes. The Court permitted service of notice on email address of the corporate debtor available with the petitioner or by way of email to the corporate debtor registered with the MCA. Along with the section 7 application, the registered master data of the corporate debtor as registered in the MCA was also brought on record and email of the corporate debtor as registered in the master data of the MCA was utilised for service of notice to the corporate debtor. Admittedly, appellant himself has filed an affidavit of

service on record, which clearly proves that service was affected by the email sent by them. In addition to the service of notice by email dated 24.10.2024, as per order issued by the adjudicating authority on 24.10.2024, subsequent email was also sent informing the next date fixed in the matter, i.e., 26.11.2024, which email we have already extracted above.

15. Learned counsel for the respondent during submissions have submitted that service was also affected physically through by the bank and report of agency who went to serve the notice has also been brought on record by affidavit of service dated 14.11.2024, which affidavit of service has not been brought on record by the appellant. Learned counsel for the respondent has handed over the affidavit of service as e-filed on 14.11.2024 for perusal of the Court. Service report indicates that the address as entered on the address as registered with the financial creditor. The premises of the corporate debtor was visited, however, entry was not allowed on the premises. Along with the affidavit of service, notice and photographs were also annexed.

16. We have noted above the submissions of the appellant that corporate debtor having not filed any application, petition or reply service by email address cannot be accepted. In Rule 38(1), the expression "at the email address as provided in the petition or application or in the reply". It clearly refers to petition which was filed by the financial creditor under Section 7 and email address as provided in Section 7 is the address on which process can be served on the corporate debtor. Thus, we are not persuaded to accept the submission of the appellant that in the present case service under Rule 38(1) was not possible, the corporate debtor having not been filed any petition,

application or reply. The authorised representatives of the bank also physically visited the premises who have submitted a report.

17. We, thus are satisfied that service of the notice was duly made to the appellant and the adjudicating authority proceeded to hear the matter only after service was duly affected on corporate debtor. It is relevant to notice that the appellant during his submissions has not even questioned the debt and default on the part of the corporate debtor. The debt and default was fully proved by the financial creditor. The copy of CIBIL Reports and statements of account were also filed by the financial creditor. The corporate debtor was well aware of the several proceedings initiated by the financial creditor against the corporate debtor.

18. In the facts of the present case, we are of the view that no good ground has been made to interfere with the impugned order admitting Section 7 application.

There is no merit in the appeal. Appeal dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

04th April, 2025

himanshu