

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 684 of 2018

[Arising out of Order dated 17th September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench III, in CP-IB-394/ND/2018.]

IN THE MATTER OF:

Alloysmin Industries

(Through its Proprietor Mr. Ashok Kumar Sharma)
Registered Office at:
KD-205, Pitampura,
Delhi -110088.

...Appellant

Vs

Raman Casting Private Limited

(Through its Managing Director)
Registered Office at:
House No.275, Village Dera,
South West Delhi,
Delhi – 110074.

...Respondent

Also At:

Plot No. G1-267-68, 279-80,
RIICO Industrial Area,
Khuskhera, Bhiwadi,
Rajasthan.

Present:

For Appellant: Ms. Divya Aggarwal, Advocate.

For Respondent: None.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant – ‘M/s Alloysmin Industries’ filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’) for initiation of Corporate Insolvency Resolution Process against Respondent – ‘M/s Raman Casting Private Limited’. The Adjudicating Authority by impugned order dated 17th September, 2018 rejected the application under Section 9 on the ground that the demand notice under Section 8 of the Code was duly sent through courier to the registered office address but the same was returned to the Applicant with remark “S/A RTO”.

2. Learned counsel appearing on behalf of the Appellant submits that the demand notice under Section 8 was issued to the Respondent in the Registered Office at House No. 275, Village Dera, South West Delhi, Delhi – 110074, as also at its Industrial Area Office at Plot No. G1-267-68, 279-80, RIICO Industrial Area, Khuskhera, Bhiwadi, Rajasthan. Though the demand notice issued under Section 8 in the Registered Office address of ‘M/s Raman Casting Private Limited’ was returned with remark “S/A RTO”, the demand notice under Section 8 issued at Industrial Area Office was duly served on the Corporate Debtor.

3. Notices were issued on 'M/s Raman Casting Private Limited' both in the Registered Office at House No. 275, Village Dera, South West Delhi, Delhi – 110074 and Industrial Area Office at Plot No. G1-267-68, 279-80, RIICO Industrial Area, Khuskhera, Bhiwadi, Rajasthan. In spite of the service of notice on Corporate Debtor on both the aforesaid addresses, nobody appeared on behalf of the Respondent – Corporate Debtor. On 11th December, 2018 taking into consideration that the Respondent is not appearing, to give one more opportunity we adjourned the case. In spite of service of notice on both the addresses i.e. in the Registered Office and at the Industrial Area Office and in spite of the fact that the Appellant has brought the order dated 11th December, 2018 to the notice of the Corporate Debtor, nobody appeared on behalf of the Respondent.

4. From the end of paragraph 3 of the impugned order dated 17th September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench III, we find that the Adjudicating Authority noticed that the demand notice was sent by the Appellant to the Corporate Office of the Respondent, which was duly received by the Respondent. The corresponding dispatch proofs and tracking report was placed by the Appellant but in spite of the same the Adjudicating Authority rejected the application under Section 9 on the ground that notice was not served on the Registered Office of the Respondent.

5. Respondent has not disputed that a claim of Appellant that of Rs.7,67,675/- is outstanding from the Respondent as per the ledger account maintained by the Appellant. It is also not disputed that inspite of repeated requests, the Respondent – Corporate Debtor failed to make payment and thereby defaulted. Apart from demand notice (in Form 3), the Appellant has also filed the application under Section 9 (in Form 5 at page 29), which shows that the application is complete. The Corporate Debtor has not taken any plea that there is an existence of dispute.

6. In view of aforesaid facts we hold that the Adjudicating Authority erred in rejecting the application under Section 9 on wrong presumption that demand notice is to be served on the Registered Office of the Corporate Debtor and not on Corporate Office (Industrial Area Office herein). If the demand notice under Section 8 (1) is served on Corporate Debtor either on its Registered Office or its Corporate Office, it should be treated to be valid service of notice under Section 8 and application under Section 9 on failure of payment, if filed after 10 days, is maintainable.

7. We accordingly set aside the impugned order dated 17th September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench III, in CP-IB-394/ND/2018 and remit the case to Adjudicating Authority to admit application under Section 9 without going into other issues in the matter, in view of deemed service on the Corporate

Debtor. A fresh notice may be issued to the Corporate Debtor to give an opportunity, in its both aforesaid addresses to enable the Respondent to settle the claim with the Appellant and enable the Appellant to withdraw its petition. Otherwise, the application under Section 9 is to be admitted and appropriate order of moratorium and appointment of Interim Resolution Professional is required to be passed. The appeal is allowed with aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

21st January, 2019

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