

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 916 of 2020

In the matter of:

Aster Technologies Pvt. Ltd.

Through its Director,
Having office at: A-2, Second Floor,
Shopping Centre, Naraina Industrial Area,
Phase – II, New Delhi – 110028.

CIN: U74899DL1988PTC033500

...Appellant/Operational Creditor.

Versus

Solas Fire Safety Equipment Pvt. Ltd.

Through its Directors,
Having Office at: No. 2, Ist Main Road,
Vasanthnagar, Bangalore,
Karnataka – 560052.

...Respondent/Corporate Debtor.

Present:

For Appellant: Mr. Manoranjani Shaw, Advocate.

For Respondent: Mr. Kumar Sudeep, Advocate.

ORDER
(Virtual Mode)

05.01.2021 This Appeal has been filed by the Appellant-Operational Creditor against Impugned Order dated 09th September, 2020 passed in CP (IB) No. 184/BB/2020 by the Adjudicating Authority (NCLT, Bengaluru Bench). By the Impugned Order, the Adjudicating Authority disposed of the Application under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC in Short) filed by the Appellant as Operational Creditor with a direction to the Respondent (who was not yet served) to settle the issue or the Appellant would be at liberty to file fresh Company Petition.

2. The Learned Counsel for the Appellant submits that the Appellant filed the Application under Section 9 of IBC and the Adjudicating Authority issued Notice. On the date of return of Notice, the Appellant claimed that service is complete but none had appeared for Respondent. The Adjudicating Authority observed that the amount of the Operational Debt was small amount of Rs. 4.35 lakhs and thus instead of admitting the Application under Section 9 of IBC directed the Respondent to settle the issue and left the Appellant high and dry. Learned Counsel for Respondent submits that on merits the Respondent has a good case as there was pre-existing dispute. Learned Counsel for Respondent also submits that the claim is barred by Limitation. It is stated that the Respondent was not served.

3. We have seen the Impugned Order. Paragraphs 4 to 6 of the Impugned Order read as under:

“4. The Adjudicating Authority, has ordered notice on 22.06.2020 to the Corporate Debtor as well as its MD. The Learned Counsel claimed that notice has been served on the Corporate Debtor, as ordered. However, none appears for the Respondent. In pursuance to order placed by the Respondent, the Petitioner stated to have supplied requisite goods and service to their satisfaction. Accordingly, the Respondent has addressed a letter dated 13.03.2018 to the Petitioner by inter-alia stating that due to some un-avoidable circumstances, payments are delayed from their clients and funds flow was also not good since financial year ending, promised to clear the dues within 30 days period. When the Respondent

failed to honour their promise, the Petitioner has issued demand Notice dated 04.10.2019 under the provisions of Code, and thereafter the Respondent raised dispute vide their Reply dated 13.12.2019. The contentions raised in the Reply is totally contrary to their earlier letter dated 13.03.2018, and these contentions/allegations are not all tenable and they cannot constitute valid and legal dispute. Since the Respondent did not appear before the Adjudicating Authority, the amount involved in the case is mere Rs. 4.35 lakhs, and initiation of CIRP is not a solution for the Petitioner, which is small entrepreneur and operational Creditor. Operational. And chances of getting dues of Operational Creditors are very less in comparisons to secured Creditors.

5. *For the aforesaid reasons and circumstances, we are of considered view that instead of keep the case pending for service of notice on the Respondent and getting their reply, interest of both the parties would be met, if the Petition is disposed of by directing the Respondent to settle the issue in question within a stipulated period. We are not inclined to pass adverse order against the Respondent at Present and give one opportunity to the Respondent to settle the issue.*

6. *In the result, C.P. (IB) No. 184/BB/2020 is hereby disposed of by directing the Respondent to settle the issue in question, failing which the Petitioner is at liberty to file fresh Company Petition in accordance with law. The Registry is directed to issue a copy of this order to both the Parties. No order as to costs.”*

4. We find this approach of the Adjudicating Authority not to be in accordance with law. If the Respondent is not served, it has to be ensured that the Respondent is served with the Notice. If the Respondent has been served and does not appear, the Adjudicating Authority would be required to consider if the Application under Section 9 of IBC is complete and if there is debt due and default as required by the law. If application is complete, it has to be admitted. The present order however directs the Respondent to settle the issue who had not appeared before the Adjudicating Authority, which is most inappropriate.

5. For the above reasons, we set aside the Impugned Order. We remand back the matter to the Adjudicating Authority. CP (IB) No. 184/BB/2020 is restored to the file of Adjudicating Authority (NCLT Bengaluru Bench). The Adjudicating Authority is requested to consider the Application as per provisions of IBC and decide the same as per law, after hearing the parties. The Appellant and Respondent are directed to appear before the Adjudicating Authority on **27th January, 2021.**

The Appeal is disposed of accordingly.

Registry to send copy of this Judgment to Adjudicating Authority immediately.

[Justice A.I.S. Cheema]
Member (Judicial)

[Mr. V.P. Singh]
Member (Technical)

Basant B./md.