

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 559 of 2019

IN THE MATTER OF:

**Om Logistics Ltd.
Vs.
MSR Telecom Pvt. Ltd.**

**.....Appellant
.....Respondent**

Present :

For Appellant: Mr. Chirag Malik, Advocate

O R D E R

19.08.2019 The Appellant – ‘Om Logistics Ltd.’ (Operational Creditor) filed an application u/s 9 of the ‘Insolvency and Bankruptcy Code, 2019 (for short, ‘the I&B Code’) on which the Adjudicating Authority by order dated 6th February, 2019 asked the Appellant to serve a copy to the ‘Corporate Debtor’ and ordered to issue notice to the ‘Corporate Debtor’ at its registered office. The case was ordered to be listed on 5th March, 2019.

On 5th March, 2019, learned counsel for the Appellant was not present and so the application under Section 9 was dismissed with the following observations:

“None appears for the applicant. As per the last order dated 06.02.2019, the petitioner sought time for

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...serving the Corporate Debtor to its registered office address but till today the order is not complied with by the petitioner. In the circumstances, the petition stands dismissed for non-compliance/diligent prosecution.”

In the present appeal, notices were issued but returned unserved. For the said reason, we directed to publish notices through newspapers, one in (English) ‘Times of India’, New Delhi publication and another in (Hindi) ‘Hindustan’, New Delhi publication which was published on 19th July, 2019 showing 19th August, 2019 as the next date of hearing at 10.30 A.M. In spite of publication, the respondent has not appeared nor disputed the claim as made by the Appellant. This apart inspite of notices issued on the respondent it appears that the respondent is avoiding to accept the notice, so the notice was also issued and served through *e-mail*, but Respondent has not appeared nor disputed the claim.

As the impugned order dated 5th March, 2019 had been dismissed for non-prosecution and not on merit, to give one opportunity to the Appellant we set aside the impugned order dated 5th March, 2019 and remit the case to the Adjudicating Authority who will issue fresh notice to the respondent and pass appropriate order on merit after giving opportunity to both the parties in accordance with law. As we find that the Respondent (‘Corporate Debtor’) had

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been avoiding notices, apart from issuance of notice by Speed post, the Adjudicating Authority may order publication of notice in newspaper(s) as was ordered by this Appellate Tribunal by fixing a time and the date of hearing.

The appeal is allowed with aforesaid observations.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[KanthiNarahari]
Member (Technical)

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