

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 145 of 2017**

**IN THE MATTER OF:**

**Anu Elastics Pvt. Ltd.**

**....Appellant**

**Vs**

**Aggarwal Elastics**

**....Respondent**

**Present:**

For Appellant: Shri P. Nagesh and Shri Dhruv Gupta, Advocates

For Respondent: Ms Judy James, Advocate

**ORDER**

**10.10.2017:** The respondent - M/s Aggarwal Elastics Pvt. Ltd. through its proprietor (Operational Creditor) 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 processes against the appellant - M/s Anu Elastics Pvt. Ltd. (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench by impugned order dated 25<sup>th</sup> July, 2017 admitted the application, declared moratorium in terms of Section 15 of I&B Code and called for the names of interim Resolution Professional from Insolvency and Bankruptcy Board of India. The said order is under challenge in this appeal.

2. The main plea taken by the appellant is that no notice was issued or served by the Adjudicating Authority on the appellant. It is further submitted that though there is an existence of dispute, still the application has been admitted.

3. Learned counsel appearing on behalf of the appellant relied on a letter dated 1<sup>st</sup> June 2016 written by a lawyer on behalf of the appellant to the lawyer of the Operational Creditor pursuant to the legal notice dated 09.03.2016 issued on behalf of the Operational Creditor in support of the claim that there is an existence of dispute.

4. Learned counsel appearing on behalf of the respondent – Operational Creditor referred to an order dated 31<sup>st</sup> May, 2017 to suggest that the notice was issued by the Adjudicating Authority by Dasti, i.e. through the Operational Creditor returnable on 3<sup>rd</sup> July, 2017. Reliance has also been placed on the affidavit filed by the Operational Creditor along with the postal receipt and the tracking record to re-affirm that the notice has been served. However, from the order dated 3<sup>rd</sup> July, 2017 enclosed by the respondent, we find that no notice was served on the appellant. This is apparent from the order dated 3<sup>rd</sup> July, 2017 passed by the Adjudicating Authority, as quoted below:

*“Affidavit of service is being filed along with the postal receipt and the tracking report which reflects that though the steps were taken at the registered office of the Corporate Debtor, the same has been received with the report, “No such office at the given address”. This is deemed sufficient and service.*

*None is present on behalf of the Corporate Debtor to come out for further consideration on 7<sup>th</sup> July, 2017.”*

5. Though it was reported that no notice has been served at the given address, but the Adjudicating Authority wrongly treated the notice deemed to have been served. It is a settled law that on refusal of the notice by a party, the

same can be deemed to have been served, but for insufficient or on wrong address, return of notice cannot be treated to be served. From the aforesaid fact, we find that the impugned order dated 25<sup>th</sup> July, 2017 was passed by the Adjudicating Authority completely in violation of rules of natural justice.

6. The letter issued on behalf of the appellant – Corporate Debtor dated 1<sup>st</sup> June, 2016 shows that there is also an ‘existence of dispute’ as is clear from the relevant portions and the preliminary objections as quoted below:

*“3. That your client in order to extort money from my client, has sent false and frivolous legal notice, which even to the knowledge of your client, is based on false facts. It is in the knowledge of your client that no amount is due and recoverable from my client as my client has already paid entire amount in respect of the invoices, which have been raised by your client on my client and further your client time and again have also issued credit notes to my client as goods supplied by your client to my client were defective and the same were taken back by your client.*

xxx

xxx

xxx

*8. That the contents of para No. 8 of the legal notice are wrong and denied. It is wrong to states that my client is liable to pay amount of Rs.47,56,651.50 paise as principle amount to your client. It is again reiterated herein that my client is not liable to pay any amount to your client. It is further wrong to states that my client is also liable to pay amount of Rs.46,03,115/- to your client on account of interest.”*

7. For the reasons aforesaid, the impugned order cannot be sustained. The said order is accordingly set aside.

8. In effect, order(s), if any, passed by Ld. Adjudicating Authority appointing any 'Interim Resolution Professional' or freezing of account, if any, and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the I&B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The appellant company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

9. Learned Adjudicating Authority will fix the fee of 'Interim Resolution Professional', if appointed, and the Respondents will pay the fees of the Interim Resolution Professional, for the period he has functioned. The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S. J. Mukhopadhaya)  
Chairperson

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

(Balvinder Singh)  
Member (Technical)

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