

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 955 of 2019

IN THE MATTER OF:

IL&FS Financial Services Ltd.

...Appellant

Vs.

Emerald Lands (India) Pvt. Ltd.

...Respondent

Present: For Appellant: - Mr. Rupinder Singh Suri, Senior Advocate with Mr. Rohit K. Agarwal and Ms. Dipika Jain, Advocates.

O R D E R

22.10.2019— The Appellant- 'IL&FS Financial Services Limited' filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against 'Emerald Lands (India) Pvt. Ltd.'. However, for non-compliance of certain orders, the application under Section 7 has been dismissed by the Adjudicating Authority (National Company Law Tribunal), Court-III, New Delhi, by impugned order dated 27th August, 2019, which reads as follows:

"Learned Counsel for the petitioner is present. Vide Order dated 24.7.2019, it is submitted by Ld. Counsel for the petitioner that compliance has been done and represents that notice has been served upon the Corporate Debtor in person. Perusal of the order shows that opportunity was granted to the petitioner to serve through all modes at the registered office of the Corporate Debtor through Post or e-Mail, to which, Ld. Counsel for the petitioner stated that the notice has been received by one Bharti Sethi. However, on the face of the

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letter of service, it is evident from the same that the person has not identified as to designation of the said person or official seal has been affixed on behalf of the Corporate Debtor. In the circumstances, since all modes of services was permitted. Let the petitioner ascertain service should have been attempted through all modes available to the registered office of the Corporate Debtor. It is not sufficient for the petitioner to state that having served the notice in person which is questionable as the person who has signed has not divulged as to in which capacity he/she has received the notice on behalf of the Corporate Debtor.

We are constrained hence to dismiss this petition in view of the non-compliance of the order in view of the limited time window available for this Tribunal to dispose of Section 7 applications and this petition is hence dismissed for non-compliance.”

2. Notice was issued to the Respondent and properly served but he has not chosen to appear in the matter.

3. Having heard learned counsel for the Appellant and being satisfied with the grounds, we are of the view that the Adjudicating Authority has given a wrong ground to dismiss the application under Section 7 of the 'I&B Code'. Only because the person receiving notice at the address of the 'Corporate Debtor' does not put designation by itself is no reason to straight away dismiss the application of the 'Financial Creditor'.

4. For the reasons aforesaid, we set aside the impugned order dated 27th August, 2019 and remit the case IB-1466/ND/2019 to the Adjudicating Authority (National Company Law Tribunal) Court-III, New Delhi to decide the application on its merit after hearing all the parties.

The appeal is allowed with aforesaid observations and directions.
No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Ar/g