

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) NO.714 OF 2019

In the matter of:

Mark Splendour Nonwovens Pvt Ltd

Appellant

Vs

Dakota Chemicals India Pvt Ltd

Respondents

**For Appellant :Mr Anjani Kumar Singh and Mr. Saroj Kumar Singh,
Advocates for appellant**

ORDER

15.07.2019- M/s Dakota Chemicals India Pvt Ltd filed an application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (I&B Code in short) against Mark Splendour Nonwovens Pvt Ltd. In the said case, the matter was taken up by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench on 25th January, 2019 and then on 7th March, 2019. The Adjudicating Authority vide order dated 12.4.2019 observed that on 25.1.2019 fresh notice was issued to the Corporate Debtor and was duly served. However, the order dated 12.4.2019 stated that it was issued by the operational creditor and not by the Adjudicating Authority. Subsequently the case was fixed on 3.5.2019 when case was adjourned for 17.5.2019 stating that the Corporate Debtor has not appeared.

2. The appellant, Corporate Debtor, moved an application for the recall of the order dated 12.4.2019 and 3.5.2019 passed by the Adjudicating Authority on the ground that the said order was passed ex-parte. No notice was issued on the Corporate Debtor. The Adjudicating Authority vide impugned order

dated 6.6.2019 observed that although the registered office is at Bhiwadi District Alwar, Rajasthan, the appellant is based in Gurgaon and he was not in a position to receive the notice and appear before the Tribunal. With the opposition from the Respondent, the Tribunal refused to recall the earlier order and ordered the matter for enquiry on 5.7.2019. Prima facie although view that Corporate Debtor having appeared and have been allowed to file its objections, if any, there is no occasion for making any enquiry in the matter and thereby to delay the process. However, before passing any final order it is desirable to hear the operational creditor.

3. Let notice be issued to Respondents through speed post. Requisites alongwith process fee, if not filed, be filed by tomorrow. If the appellant provides the email address of the Respondents, let notice be also issued through email. Dasti Service is also permitted.

4. Post the case for order on **19th August, 2019.**

5. In the meantime, during the pendency of the appeal, the Adjudicating Authority will not pass an order of admission.

6. The respondent is permitted to file its reply-affidavit within three weeks.

(Justice S.J. Mukhopadhaya)
Chairperson

(Balvinder Singh)
Member (Technical)

(Kanthi Narahari)
Member (Technical)

Bm/su