

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

(Arising out of Order dated 22nd December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in CP No. (IB) 140/7/NCLT/AHM/2017)

Company Appeal (AT) (Insolvency) No. 68 of 2018

IN THE MATTER OF:

Ranjeet Karnal

...Appellant

Vs.

Bell Finvest (India) Limited

...Respondent

Present: For Appellant: - Ms. Reema Jain, PCS.

For Respondent: - Mr. Vinit J. Mehta and Mr. Anirudh Puroshottam, Advocates.

O R D E R

07.03.2018— This appeal has been preferred by Mr. Ranjeet Karnal, Director of Laser Care India Private Limited ('Corporate Debtor') against the order dated 22nd December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench in CP. No. (IB) 140/7/NCLT/AHM/2017, whereby and whereunder the application preferred by the Respondent- 'Financial Creditor' under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been admitted, order of 'Moratorium' has been passed and 'Interim Resolution Professional' has been appointed with certain directions.

2. Learned Company Secretary appearing on behalf of the Appellant submits that no notice under Rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with Form-1 was served on the 'Corporate Debtor'. Even notice issued by the Adjudicating Authority was not served on the 'Corporate Debtor' which has been noticed at Paragraph no. 6 of the impugned order, which reads as follows:

“6. Petitioner served a copy of petition on the respondent and filed proof of service. Petitioner also filed proof of service of notice of the date of hearing on respondent. This Tribunal also directed Registry to issue notice of date of hearing on respondent. Registry of this Tribunal also issued notice to the respondent but it was returned unserved. None appeared for the respondent. Respondent has not filed any objections. Heard arguments of learned counsel for the petitioner.”

3. It is further submitted that the address of the 'Corporate Debtor' was changed more than a year prior to the filing of the application under section 7 of the 'I&B Code' which was known to the 'Financial Creditor' but for reasons known to them, the notices were sent to the old address.

4. It is also submitted that there was no default of debt and therefore, the application under Section 7 of the 'I&B Code' was not maintainable.

5. Learned counsel appearing on behalf of the Respondent- 'Financial Creditor' submitted that the proof of service of notice of the date of hearing has been filed by the 'Financial Creditor'. However, we find that the Adjudicating Authority issued notice recording the date of hearing of the application was not served on the 'Corporate Debtor' and returned unserved. It is also not disputed that the address of the 'Corporate Debtor' had been changed much prior to filing of the application under Section 7 of the 'I&B Code'; therefore, it is not clear as to how the 'Financial Creditor' filed proof of service of notice on the 'Corporate Debtor'.

6. Learned counsel appearing on behalf of the Respondent submits that the notice was served on one of the Directors, but such service of notice on one of the Directors cannot be treated as service of notice on the 'Corporate Debtor', which was the party respondent and not an individual Director. This apart, we find that there is nothing on the record to suggest that the notice under Rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was forwarded by the 'Financial Creditor' or served on the 'Corporate Debtor'.

7. In view of the fact that the rules of natural justice have been violated and the Adjudicating Authority has also accepted that the

notice of date of hearing on the Respondent was issued and returned unserved, we have no other option but to set aside the impugned order dated 22nd December, 2017 which is set aside and remit the case to the Adjudicating Authority, Ahmedabad Bench for fresh decision.

8. The Appellant will ensure that the 'Corporate Debtor' appears through its counsel or representative (not through 'Resolution Professional'), will appear before the Adjudicating Authority on 22nd March, 2018 at 10.30 a.m. The 'Financial Creditor' will also appear before the Adjudicating Authority on the said date i.e. 22nd March, 2018. The Adjudicating Authority thereafter, will fix a date of hearing in presence of the Appellant or representative of the 'Corporate Debtor' and after hearing the parties will pass appropriate order in accordance with law. The appeal stands disposed of with aforesaid observations and directions. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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