

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT)(Insolvency) No.222 of 2018

IN THE MATTER OF:

The Sandesh Ltd.

.....Appellant

Vs.

Realm Media Solutions Pvt. Ltd.

.....Respondents

Present :

**For Appellant: Mr. Yashvardhan with Ms. Smita Kant and Mr. Mohit
D.Ram, Advocates**

O R D E R

14.03.2019 – The Appellant – ‘Sandesh Limited’ (‘Operational Creditor’) issued Demand Notice u/s 8(1) on 21.07.2017 at the registered office of Realm Media Solutions Pvt. Ltd. (‘Corporate Debtor’). No reply being received, the Appellant filed application u/s 9 of the Insolvency & Bankruptcy Code (I&B Code). The Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi by impugned order dated 13.03.2018 rejected the application on the ground that there is no proof that the notice was delivered to the ‘Corporate Debtor’ at the registered office referring the provision of Insolvency and Bankruptcy Code of India (Appellate Authority) Regulation, 2016. It was held that as per Regulation 5, the ‘Operational Creditor’ should have delivered the

...contd./

'Corporate Debtor' the documents which has not been delivered in the matter shown therein.

2) Learned Counsel appearing on behalf of the Appellant submitted that the Demand Notice in terms of Section 8(1) was issued in accordance with the provision of aforesaid Regulation. If the 'Corporate Debtor' failed to submit the reply under sub-section (2) of section 8, the application of 'Operational Creditor' cannot be rejected on the ground of non-enclosure of such reply. It is further submitted that the 'Corporate Debtor' all the time refused to accept the Demand Notice issued u/s 8(1).

3) In the present appeal, notice was issued by this Appellate Tribunal on Respondent ('Corporate Debtor') but they returned undelivered. Fresh notice was also issued in its present and correct address but that has also been returned unserved. In this background, the Appellant was allowed to make paper publication(s) in two newspapers, one in English ('Times of India'), New Delhi / NCR edition and another Hindi ('Hindustan'), New Delhi / NCR edition intimating the Respondent about the next date of hearing.

4) Publication of notice on Respondent has also been made in aforesaid newspapers copies of which has been enclosed. In spite of publication of notice in two newspapers, the Respondent do not chose to appear. This shows that the

Respondent is deliberately avoiding the service of notice and the stand taken by the Appellant that the Respondent is deliberately avoided to receive the Demand Notice u/s 8(1) of the Insolvency & Bankruptcy Code (I&B Code) is correct.

5) In the circumstances, we hold that the Demand Notice u/s 8(1) of the Insolvency & Bankruptcy Code (I&B Code) deemed to have been served on the Respondent and thereby the application u/s 9 was maintainable.

6) We accordingly, set aside the impugned order dated 13.03.2018 and remit the case to Adjudicating Authority (National Company Law Tribunal), Special Bench for admission of the application u/s 9 after notice to the Respondent. If the notice is not served, the Appellant will publish fresh notice in two newspapers as earlier ordered by this Appellate Tribunal and after hearing the parties, the Adjudicating Authority will pass appropriate orders. However, inspite of such service of notice or publication of notice, if the Respondent do not chose to appear, the Adjudicating Authority will admit the Section -9 application. The appeal stands disposed of with aforesaid observations and directions. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

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

ss/gc