

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.Respondent

Present:

For Appellant: Mr. Anjani Kumar Singh, Advocate and Mr. Daya Singh, A.R.

For Respondent: Ms. Pravati Bhatnagar, Advocate

ORDER

24.01.2020 This appeal has been filed by the Corporate Debtor against whom an Application under Section 9 was filed by the Respondent- Operational Creditor before the Adjudicating Authority (National Company Law Tribunal, Jaipur Bench), Jaipur. It is stated that Section 9 Application was filed on 30.06.2018. This Appeal has been filed against the Impugned order dated 06.06.2019 passed by the Adjudicating Authority which is a short order and reads as under:

“ORDER

This is an application filed by the Corporate Debtor seeking for the recall and set aside the order dated 12.04.2019 and 03.05.2019 passed by this Tribunal, wherein the Corporate Debtor under the circumstances stated therein was proceeded exparte. Learned counsel for the applicant during the course of submission in relation to this application points out to paragraph No. 5 of the said application as the reason for not

appearing in the earlier hearings. Perusal of the said paragraph shows that although the registered office of the respondent is in Bhiwadi District Alwar, Rajasthan, since the applicant/respondent was based in Gurgaon, he was not in a position to receive the notice and appear before this Tribunal. Learned counsel for the non-applicant/Operational Creditor vehemently objects to the application being allowed on the above said grounds. It is also pointed out by learned counsel for the Operational Creditor that affidavit of service has also been filed wherein, it is established that the applicant/respondent was duly served. In addition, it is also represented by learned counsel for the non-applicant/Operational Creditor that e-mail service has also been affected on the Corporate Debtor and despite being aware of the proceedings before this Tribunal, the Corporate Debtor has not chosen to appear on early occasions. There seems to be some merit in the contentions of the learned counsel for the non-applicant/Operational Creditor as it is specifically observed in the order dated 12.04.2019 as to the circumstances under which this Tribunal was constrained to proceed ex parte as against the Corporate Debtor. This Tribunal is not convinced by the reasons put forth by the Corporate Debtor and in the circumstances, this application stands dismissed.

Let the matter be posted for enquiry on 05.07.2019.”

2. Learned Counsel for the Appellant is giving various reasons and stating that the Appellant was not served and thus could not appear before the Adjudicating Authority on time and when the Appellant appeared and sought participation, he was not allowed to file his Reply and was treated as *ex parte*.

3. Learned Counsel for the Respondent is referring the Reply filed by the Respondent and Annexures attached with the Reply to show as to how various efforts were made and the Appellant was actually served and still did not appear and the matter was protracted.

4. When this matter had come up before this Tribunal on 15.07.2019, in view of the submissions made, it was observed in paragraph-2 as under:

...

“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.”

...

It was then directed that during pendency of Appeal, the Adjudicating Authority will not pass an Order of Admission.

5. Under the law, an Applicant like present one, is duty bound to serve Respondent on the Registered address of the Company and not to go in chase of the Director at other addresses. Reasons given in Appeal like Director was travelling and that he did not see the e-mail and others have no substance. Going through efforts made by the Respondent as seen in the Reply and various orders which have been attached by the Respondent with Reply, we find that the Appellant was not diligent in appearing and participating in the proceeding which were pending before the Adjudicating Authority.

6. At the same, we are conscious that Section 9 proceeding under IBC is a serious matter and when the Application is stated to be still pending, nothing would happen if the Appellant is given one opportunity to file Reply and participate. This can be subject to payment of costs.

7. It is stated that stay order dated 15.07.2019 passed by this Tribunal was vacated vide order of this Tribunal dated 03.01.2020. It is stated that the matter is yet to come up before the Adjudicating Authority and Section-9 Application is still pending.

8. We direct the parties to appear before the Adjudicating Authority on 17.02.2020. The Appellant will file reply to Section 9 Application before the Adjudicating Authority on or before 17.02.2020 along with cost of Rs. 75,000/- to be deposited with Registry of Adjudicating Authority. The costs deposited will be paid to the Respondent- Dakota Chemicals India Pvt. Ltd. If on or before 17.2.2020 the Reply is not filed and/or the costs as directed is not deposited, the Adjudicating Authority would proceed to dispose of Section-9 Application as per law at an early date. If the costs is deposited and Reply is filed on or before 17.02.2020, the Adjudicating Authority will hear the arguments of the Appellant (Corporate Debtor) and decide the Application under Section 9 of IBC.

8. With these directions, the present Appeal stands disposed of.

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

(Kanthi Narahari)
Member(Technical)

Akc/Md.