

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 627 of 2018

IN THE MATTER OF:

V.Chiranjiv & Co.

...Appellant

Versus

Wiltan Telmag (India) Pvt. Ltd.

...Respondent

Present:

For Appellant : **Mr. Arunav Patnaik, Ms. Anandini Kumar, Advocates**

For Respondents : **Ms. Somya Yadav, Advocate for Respondent**

ORDER

31.01.2019 The Appellant ('Operational Creditor') is aggrieved of rejection of his petition filed u/s 9 of the Insolvency & Bankruptcy Code ('I&B' for short). In terms of impugned order dated 28.8.2018, the Adjudicating Authority (National Company Law Tribunal), Bench III, New Delhi held that the Demand Notice u/s 8(1) was not served and the application u/s 9 was not maintainable.

Learned Counsel for the Appellant took plea that in spite of issuance of Demand Notice u/s 8(1) which returned 'unanswered' because of closure of 'regional office' as reported by the 'Postal Department'. Personal Demand Notice was also sent to the Respondent but it was found closed. Notices

were issued on Respondent by this Appellate Tribunal but it returned unserved. Ultimately, the Counsel for the Appellant served the notice on Shri Pradeep Gill, Whole Time Director of the Respondent Company- 'Wiltan Telmag (India) Pvt. Ltd.' A copy of the paper book is also served. Ms. Somya Yadav, Advocate appeared on behalf of the Respondent.

It was submitted by the learned Counsel for the Respondent that the Appellant may be issued a fresh Demand Notice u/s 8(1) and in that case the 'Corporate Debtor' will file reply in terms of Section 8(2). On the other hand, according to the learned counsel for the Appellant, if fresh notice is again issued, and thereafter it is filed then the matter may be barred by limitation.

In the present case, Demand Notice as was issued u/s 8(1) on 13.01.2018, has been enclosed with the paper book as Annexure – 16. Now it is available with the 'Corporate Debtor', therefore, it will be deemed to have been served now.

In the circumstances, we allow the 'Corporate Debtor' to file reply u/s 8(1) in terms of section 8(2) within 10 days i.e. by 11th February, 2019. Thereafter it will be open to the Appellant(s) to file fresh application u/s 9 in Form 5, if the matter is not settled. In such case, the Adjudicating Authority will decide the case on merit uninfluenced by the impugned order dated 28th August, 2018. We make it clear that have not determined the case on merit.

It will be open to the parties to settle the claim by 11th February, 2019 or with Counsel thereafter.

The appeal stands disposed of with the aforesaid directions. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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