

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 880 of 2020

In the matter of:

Sri D. Srinivasa Rao

....Appellant

Vs.

Vaishnovi Infratech Ltd.

....Respondent

Present:

**Appellant: Mr. Krishan Dev Jagarlamudi, Mr. Harsh Parashar,
Advocates.**

Respondent: None

ORDER

(Through Virtual Mode)

05.01.2021: Despite awaiting appearance of Respondent on last date, there is no appearance on its behalf even today. In the circumstances, we proceed to hear learned counsel for the Appellant in *ex-parte*.

2. Application of Appellant- Operational Creditor filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Respondent- 'Vaishnovi Infratech Ltd.' (Corporate Debtor) came to be rejected by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Special Bench (Video Conference) in terms of the impugned order dated 9th June, 2020 on the ground that the demand notice as mandated under Section 8(1) of the 'I&B Code' was not served on the Corporate Debtor as the same was returned unserved. Aggrieved thereof, the Appellant- Operational Creditor has filed the instant appeal assailing the impugned order primarily on the ground that the delivery of demand notice sent by the Appellant to Respondent- Corporate Debtor was refused by the Corporate Debtor. Reference in this regard is made to page 57 of the appeal paper book which bears the endorsement on the postal article,

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stated to have been containing the demand notice, which reads “addressee refused service”. Learned counsel for the Appellant submits that refusal to accept demand notice would not amount to non-delivery of notice and the only inference available thereunder is that the Respondent- Corporate Debtor, being aware of the contents of the notice, refused to accept the delivery thereof to avoid the legal consequences.

3. Heard learned counsel for the Appellant and perused the record.

4. An application under Section 9 of the ‘I&B Code’ can be filed by the Operational Creditor for initiation of CIRP only after expiry of period of 10 days from the date of delivery of notice contemplated under Section 8(1) of the ‘I&B Code’ which obligates upon the Operational Creditor to deliver a demand notice of unpaid operational dues upon the Corporate Debtor, once default occurs. The delivery of demand notice is intended to put the Corporate Debtor on notice so that in the event of there being a pre-existing dispute like in the form of a Civil Suit or arbitration proceedings pending in regard to the amount in respect whereof default is alleged to have been committed, the Corporate Debtor can bring such pre-existing dispute to the notice of the Operational Creditor. It is also aimed at providing the Corporate Debtor with an opportunity of clearing the liability in case he does not dispute the claim. It is by now well settled that delivery of demand notice in terms of Section 8(1) of the ‘I&B Code’ is a *sine-qua-non* for initiation of CIRP at the instance of Operational Creditor who is entitled to file the application under Section 9 of the ‘I&B Code’ only after complying with the statutory requirements. In the instant case, the Appellant has been able to demonstrate that the Appellant issued the demand notice but the postal article was returned undelivered as the Corporate Debtor refused to accept delivery. Learned counsel for the Appellant has invited our attention to Pages 52-54 of the appeal paper book which is the copy of the demand notice issued by the Appellant- Operational Creditor, Page 55 which is the copy of speed post receipt and Page 57 which is the copy of the postal article bearing endorsement of the

postal authority to the effect that the “addressee refused service”. Learned counsel for the Appellant has also invited our attention to certain developments that had taken place in regard to delivery of limited notice issued by the Adjudicating Authority to Corporate Debtor. Reference is made to Page 93 of the appeal paper book which shows that the notice issued by the Adjudicating Authority has been delivered to Corporate Debtor on 14th November, 2019 on the same address, in response whereof Respondent appeared before the Adjudicating Authority. In view of the material relied upon by the Appellant, which does not appear to have been projected before the Adjudicating Authority to demonstrate that it was not a case of non-issuance/non-delivery of mandatory statutory notice under Section 8(1) of the ‘I&B Code’ on the part of the Appellant-Operational Creditor but a case of refusal on the part of the Corporate Debtor to acknowledge the notice, we are of the considered view that the learned Adjudicating Authority has erred in arriving at a finding that the demand notice was not served on the Corporate Debtor as the same was returned unserved. Had the notice been returned unserved on account of the addressee being not available on the given address or the venue of addressee being non-existent or the delivery of notice being frustrated because of some reason other than that attributed to the Corporate Debtor, the fact of notice having been returned unserved would amount to non-delivery of notice but in a case like the present one where it is the Corporate Debtor who refused to accept delivery of notice, the Adjudicating Authority would not be justified in coming to conclusion that notice has not been served on the Corporate Debtor. The only inference available in the given circumstances is that the Corporate Debtor was aware of the consequences and it deliberately refused to acknowledge the notice. The fault lies on the part of the Corporate Debtor for which it cannot be rewarded. No fault can be attributed to the Appellant- Operational Creditor as it had taken the necessary and requisite steps for service of statutory notice. Viewed in this background, the finding recorded by the Adjudicating Authority in regard to delivery of demand notice cannot be supported. The finding is erroneous, to say the least.

The impugned order suffers from grave legal infirmity and is required to be set aside.

5. For the aforesaid reasons, we set aside the impugned order and remand the matter back to the Adjudicating Authority who may, after providing the Corporate Debtor an opportunity of settling the claim, pass an order of admission or otherwise of the application under Section 9 of the 'I&B Code' filed by the Appellant- Operational Creditor upon recording of satisfaction in regard to its completion and other legal requirements.

The appeal is allowed with aforesaid observations and direction.

Copy of this order be communicated to the Adjudicating Authority forthwith. The Appellant may appear before the Adjudicating Authority on 20th January, 2021.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

AR/g