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Advocates & Consultants

NEWSLETTER

Issue V, Dated: 02.02.2021

JUDGEMENTS

1. Shubham Jain vs Gagan Ferrotech Ltd. & Anr

Issuance of Demand Notice under Section 8(1) of IBC is not a mere formality but a mandatory provision—National Company Law Appellate Tribunal

The brief facts of the case are the present Appeal has been filed against the impugned order passed by Adjudicating Authority (National Company Law Tribunal), New Delhi admitting Company Appeal against the Corporate Debtor. The Appellant has challenged the impugned order of admission primarily on two grounds - (a) Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (IBC) was not served on the Corporate Debtor; (b) Claim of the Applicant Operational Creditor was seriously disputed.

The main issue that arises for consideration in the present Appeal is whether service of Demand Notice under Section 8 of the IBC on a Director of the Corporate Debtor can be construed as deemed delivery or not for Initiation of Corporate Insolvency Resolution Process under Section 9 of the IBC.

Admittedly, the Demand Notices sent under Section 8 of the IBC to the registered address, and functional address of the Corporate Debtor met with the remarks 'addressee moved' and 'unclaimed' respectively. Unclaimed, will also have to be treated as Service of Notice.

The Hon'ble NCLAT observed that *“Admittedly, the Demand Notices sent u/s 8 of the Code to the registered address, and*

functional address of the Corporate Debtor met with the remarks' addressee moved' and 'unclaimed' respectively. Unclaimed, will also have to be treated as Service of Notice. Again one set of Demand Notice was duly served upon one of the Directors of the Corporate Debtor. The legislative intent of issuance of Demand Notice under Section 8(1) is not a mere formality but a mandatory provision. Only after service of notice under Section 8(1) and on completion of 10 days, if payment towards the demand is not made, an Operational Creditor gets right to apply under Section 9 and not before such date. Upon perusal of the record, it is apparent that the Demand Notice was duly served on the functional address as well as Director of the Corporate Debtor. Under Section 2(59) of the Companies Act, 2013 Director is included in to definition of Officer. Under Section 20 of the Act a document served on a Company or on Officer thereof is service recognized. Going from Principles of Natural Justice, in terms of Section 424 of Companies Act read with above provision of Service of Notice on Director must be held to be good service. Therefore, in our opinion, the mandate u/s 8 of the Code was fulfilled, and the Adjudicating Authority has rightly admitted the application u/s 9 filed by the Operational Creditor for initiating Corporate Insolvency Resolution Process against the Corporate Debtor.”

Link:

<https://ibbi.gov.in/uploads/order/483db1621f4f50760e40159b81c72692.pdf>

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