

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

ITEM NO. 4
(IB)-148(PB)/2022

IN THE MATTER OF:

HD Wire Pvt. Ltd.

v.

CMI Ltd.

.....Petitioner

.....Respondent

SECTION : UNDER SECTION 9

Order delivered on 25.02.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner(s):

Mr. Uddyam Mukherjee, Adv.

For the Respondent(s):

ORDER

This is petition is filed under Section 9 of the Insolvency & Bankruptcy Code 2016 (IBC, 2016). It is stated by the petitioner/Operational Creditor that notice in terms of Rule 6 of Adjudicating Authority, IBC Rules, 2016, has already been issued on the Corporate Debtor.

In view of the Judgment passed by the Hon'ble Supreme Court in the case of ***Swiss Ribbons Pvt. Ltd. & Anr. Vs Union of India & Ors.***, reported in (2019) 4 SCC 17, the Paragraph 58 reads as follows:

"...A conjoint reading of all these Rules makes it clear that at the stage of the Adjudicating Authority's satisfaction under Section 7(5) of the Code, the corporate debtor is served with a copy of the application filed with the Adjudicating Authority and has the opportunity to file a reply before the said authority and be heard by the said authority before an order is made admitting the said application."

And in the matter of ***M/s Surendra Trading Company Vs. M/s Juggilala Kamlapat Jute mills Company and Ors.*** Reported in (2017) 16 SCC 143, the Paragraph 24 reads as follows:

"Further, we are of the view that the judgments cited by the NCLAT and the principle contained therein applied while deciding that period of fourteen days within which the adjudicating authority has to pass the order is not mandatory but directory in nature would equally apply while interpreting proviso to sub-section (5) of Section 7, Section 9 or sub-section (4) of Section 10 as well. After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed,



such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible.”
And in the Judgment passed by the Hon'ble NCLAT in the matter of **Innovative Industries Vs ICICI Bank reported in 2018 1 SCC 407**, the Paragraph 64 reads as follows:

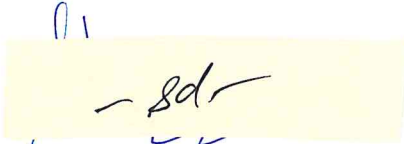
“The different decisions of the Hon'ble Supreme Court, as referred to above and exception of principles of natural justice as noticed and summarised in the preceding paragraphs is not applicable to the insolvency resolution process as it is not a case of emergency declared or prejudicial to public interest or that there is a statutory exclusion of rules of natural justice or it is impracticable to hold hearing. It is not the case that no right of any person has been affected, as immediately on appointment of an Interim Resolution Professional, the Board of directors stand superseded. There are other persons who are also affected due to order of moratorium. Therefore, the ‘adjudicating authority’ is duty bound to give a notice to the corporate debtor before admission of a petition under Section 7 or Section 9.”

Accordingly, notice to the Respondent/Corporate Debtor, be issued.

This Notice to be sent by the Petitioner/Operational Creditor under NCLT Rules, Form-5.

1. By way of an email to the registered email of the Corporate Debtor available with the petitioner.
2. By way of an email to the CD email address registered with the MCA.
3. Service by way of Dasti within three days for today.
4. Proof of Service in any one of the above form filed by way of an affidavit before the next date of hearing.

List the matter for further consideration on 11.03.2022.


(RAMALINGAM SUDHAKAR)
PRESIDENT


(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)