

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-318
IB-522/ND/2020

IN THE MATTER OF:

Desire Infrabuild Pvt Ltd

Vs

Oyo Apartments Investments LLP

....Applicant

....Respondent

SECTION

U/s 9 IBC code 2016

Order delivered on 04.03.2020

CORAM:

SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI K.K. VOHRA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Ayush Sharma
For the Respondent : Adv. Yugank Goel

ORDER

The present application has been filed on behalf of Operational Creditor under Section 9 of the IBC, 2016.

We have heard the Ld. Counsel for applicant and perused the averments made in the application.

Ld. Counsel for applicant in course of arguments, submitted that the demand notice as required under Section 8 of the IBC, 2016 was sent through the post (DTDC) enclosed at page 57 of the main application which was returned un-served in which it is mentioned that the party shifted their address that is the reason, he could not delivered the demand notice through courier or post. He further submitted that the demand notice was also sent through the e-mail address shown in the MCA Website which is enclosed at page 58 of the main application and he further submitted that in view of Rule 5 of Insolvency and Bankruptcy Application to Adjudicating Authority Rules 2016, he delivered the demand notice.



In the light of the submissions raised on behalf of the parties, we have gone through the documents enclosed with the application as well as the provision contained under which the operational creditor is required to deliver the demand notice and the same is quoted below.

5. Demand notice by operational creditor.—(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely.-

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4.

(2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,

(a) at the registered office by hand, registered post or speed post with acknowledgement due; or

(b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.

(3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any.

From the perusal of Rule 5 of the Adjudicating Authority Rules, we find that Operational Creditor is required to deliver the demand notice to the Corporate Debtor at the registered office by hand, registered post or speed post with acknowledgement due or by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.

In the light of the provision, when we shall consider the case in hand, then we find that admittedly the Operational Creditor has not delivered the demand notice in pursuant to Rule 5(2)(a) because the demand notice sent through post was returned un-served. We further find that Ld. Counsel for the Operational Creditor admits this fact that the e-mail address on which he sent



the demand notice is not the e-mail ID of the either of three persons named in Rule 5(2)(b) of the Adjudication Authority Rules, but the same is mentioned on the MCA Website, therefore, he submits that presumption would be the e-mail address is the e-mail ID of the key managerial personnel and so, he has complied the provisions contained in Rule 5(2)(b) and delivered the demand notice.

In view of this submissions made by the petitioner, we have gone through the MCA data, which the applicant has enclosed at page 21 and we find that nowhere in the MCA data, it is mentioned that this e-mail address is the e-mail of the key managerial personnel. Therefore, we are unable to accept the contention of the operational creditor. So, on the basis of aforesaid discussions, we are of the considered view that the operational creditor has not complied the provisions contained under Rule 5(2)(b) so far the direction contained under Rule 5(2)(a) we have already heard that the demand notice was not delivered.

For the reasons discussed above, we find that in view of Section 8(1) the Operational Creditor is required to delivered the demand notice but the same has not been delivered. Under such circumstances, we are unable to accept the contention of the operational creditor that it has been delivered. Since demand notice was not delivered therefore, the present application is not maintainable. Accordingly, we hereby **dismissed the application**. However, liberty is given to the petitioner to file the fresh application after delivering the fresh demand notice in accordance with the provisions of law contained in Rule 5 of the Adjudicating Authority Rules, 2016.

sd/-

(K.K. VOHRA)
MEMBER (T)

sdL

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

(Chirag)