

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 217 of 2024

IN THE MATTER OF:

Satish Kumar Sethi

...Appellant(s)

Versus

Varsha & Anr.

...Respondent(s)

Present:

For Appellant : Mr. Mohit Chaudhary, Mr. Prakhar Mithal, Advocates

For Respondents : Mr. Harsh Sharma, Advocate

O R D E R
(Hybrid Mode)

02.02.2024: Heard Learned Counsel for the Appellant as well as Learned Counsel appearing for the Financial Creditor.

2. This Appeal has been filed against the Order passed by the Adjudicating Authority dated 17th January, 2024 by which Section 7 Application filed by the Respondent herein has been admitted.

3. Learned Counsel for the Appellant challenging the Order contends that the said order has been passed without service of notice to the Appellant, Corporate Debtor. It is submitted that Learned Counsel for the Appellant has referred to an Order dated 10th January, 2024 where the Adjudicating Authority directed for fresh notice to the Corporate Debtor returnable on 17th January, 2024. It is submitted that no notice was served as directed on 10th January, 2024 and the Adjudicating Authority on 17th January, 2024 itself has admitted the Application. Appellant could neither receive the notice nor appeared before the Adjudicating Authority or filed any Reply.

4. Learned Counsel appearing for the Respondent submits that the affidavit of service was filed on 04th January, 2024 along with email dated 11th December, 2023 was annexed by which notice were served on the corporate debtor.

5. We have considered the submissions of learned counsel for the parties and have perused the record.

6. The Order dated 10th January, 2024 of the Adjudicating Authority is as follows:

“There is no appearance on behalf of the CD, despite service of notice by e-mail.

Issue fresh notice to the CD returnable op 17.01.2024. The Applicant undertakes to serve notice upon the Respondent through all modes viz. registered post, speed post, courier service. E-mail and Dasti. Affidavit of service be filed within one week. Reply, if any, may be filed by the CD within one week from the date of receipt of the notice. Rejoinder, if any, may be filed before the next date of hearing.

List the matter on 17.01.2024.”

7. After the Order dated 10th January, 2024, it was necessary for the Operational Creditor to file an affidavit proving service of notice in pursuance of the Order dated 10th January, 2024 there is nothing on record that service was effected after order dated 10th January, 2024. The Court thus having issued fresh direction of notice on 10th January, 2024, there ought to have been satisfaction before proceeding to dispose of the matter finally. The

affidavit of service after the Order dated 10th January, 2024 admittedly was not filed as submitted by Learned Counsel for the Respondent.

8. We thus are of the view that ends of justice will be served in setting aside the Order dated 17th January, 2024 and revive the application before the Adjudicating Authority for fresh consideration and to obviate the delay in proceeding, we grant two weeks time to file Reply to the Section 7 Application. Adjudicating Authority shall thereafter fix a date and proceed to decide the matter in accordance with law.

Appeal is disposed of, accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Basant/nn