

In the event of a demand notice being issued by an Advocate duly instructed by Operational Creditor, there is no need of requirement of authority being backed by the Board Resolution.

CASE TITLE	Mohit Minerals Ltd. Vs. Nidhi Impotrade Pvt. Ltd ¹
CASE CITATION	Company Appeal (AT) (Insolvency) No. 905 of 2020
DATE OF ORDER	08.01.2021
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Macquaire Bank Limited v. Shilpi Cable Technologies Limited SVG Fashion Limited v. Arpita Filaments Pvt. Ltd
SECTION/REGULATION REFERRED	Section 8(1), 9 of IBC

Brief of the case:

An Appeal was filed against the impugned order of NCLT, Ahmedabad Bench whereby Section 9 application was not admitted as being not maintainable for the reasons that the demand notice was issued without any authority.

Decision:

Hon'ble NCLAT allowed the appeal and remitted the matter back to AA with direction that that in the event of the application being complete in all respects, it may, having regard to the key ingredients of debt and default, pass an order of admission. It held that,

“... in the opinion of the Adjudicating Authority there was no due authorization backed by Board Resolution of the Operational Creditor. This finding is unsustainable as in case of a person other than an Advocate, the Board Resolution would be required but in the event of a demand notice being issued by an Advocate duly instructed by his client (Operational Creditor), there is no need of requirement of authority being backed by the Board Resolution...Once an Advocate was duly instructed to issue the demand notice, there was no room for holding that the notice delivered by the Advocate was not a notice delivered by an authorized person.”



QR CODE FOR FULL ORDER/JUDGEMENT:

¹ <https://nclat.nic.in/Useradmin/upload/19049700835ff83206067bb.pdf>