

If the Corporate Debtor is not served, it has to be ensured that the Corporate Debtor is served with the Notice of initiating CIRP application.

CASE TITLE	Aster Technologies Pvt. Ltd. v. Solas Fire Safety Equipment Pvt. Ltd. ¹
CASE CITATION	Company Appeal (AT) (Insolvency) No. 916 of 2020
DATE OF ORDER	05.01.2021
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 9 of IBC

Brief of the case:

This Appeal was filed by the Operational Creditor (Aster Technologies Pvt. Ltd.) against Impugned Order whereby the Adjudicating Authority (NCLT, Bengaluru Bench) disposed of the Application under Section 9 of IBC filed by the Operational Creditor with a direction to the Respondent (who was not yet served with the notice of section 9 application) to settle the issue or the Appellant would be at liberty to file fresh Company Petition. Since the amount of debt was small, the AA directed the Respondent to settle the matter instead of admitted the Section 9 application.

Decision:

Hon'ble NCLAT disposed off the appeal and remanded the matter back to the Adjudicating Authority and held that,

"We find this approach of the Adjudicating Authority not to be in accordance with law. If the Respondent is not served, it has to be ensured that the Respondent is served with the Notice. If the Respondent has been served and does not appear, the Adjudicating Authority would be required to consider if the Application under Section 9 of IBC is complete and if there is debt due and default as required by the law. If application is complete, it has to be admitted. The present order however directs the Respondent to settle the issue who had not appeared before the Adjudicating Authority, which is most inappropriate."



QR CODE FOR FULL ORDER/JUDGEMENT:

¹ <https://nclat.nic.in/Useradmin/upload/17560076005ff454ff47a3a.pdf>