

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-470

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**In a case where it is the Corporate Debtor who refused to accept delivery of notice, the Adjudicating Authority would not be justified in coming to conclusion that notice has not been served on the Corporate Debtor: NCLAT**

<b>CASE TITLE</b>	Sri D. Srinivasa Rao Vs. Vaishnovi Infratech Ltd. <sup>1</sup>
<b>CASE CITATION</b>	Company Appeal (AT) (Insolvency) No. 880 of 2020
<b>DATE OF ORDER</b>	05.01.2021
<b>COURT/TRIBUNAL</b>	NCLAT, New Delhi
<b>CASES REFERRED</b>	-
<b>SECTION/REGULATION REFERRED</b>	Section 8 and 9 of IBC

## **Brief of the case:**

An application filed by Operational Creditor under Section 9 of the IBC seeking initiation of CIRP against Respondent (Vaishnovi Infratech Ltd.) came to be rejected by the Adjudicating Authority (NCLT, Hyderabad Bench) on the ground that the demand notice as mandated under Section 8(1) of IBC was not served on the Corporate Debtor as the same was returned unserved. Aggrieved thereof, Operational Creditor filed the instant appeal assailing the impugned order primarily on the ground that the delivery of demand notice sent by the Appellant to Respondent was refused by the Corporate Debtor.

## **Decision:**

Hon'ble NCLAT set aside the impugned order and remanded back the matter back to the adjudicating authority observing that,

*"...it was not a case of non-issuance/non-delivery of mandatory statutory notice under Section 8(1) of the 'I&B Code' on the part of the Appellant Operational Creditor but a case of refusal on the part of the Corporate Debtor to acknowledge the notice, we are of the considered view that the learned Adjudicating Authority has erred in arriving at a finding that the demand notice was not served on the Corporate Debtor as the same was returned unserved. ...in a case like the present one where it is the Corporate Debtor who refused to accept delivery of notice, the Adjudicating Authority would not be justified in coming to conclusion that notice has not been served on the Corporate Debtor. The only inference available in the given circumstances is that the Corporate Debtor was aware of the consequences and it deliberately refused to acknowledge the notice."*



**QR CODE FOR FULL ORDER/JUDGEMENT:**

<sup>1</sup> <https://nclat.nic.in/Useradmin/upload/12439625895ff455b3d2e96.pdf>