

INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-488

February 03, 2021

The service of Notice on Director for initiation of CIRP must be held to be good service.

CASE TITLE	Shubham Jain v. Gagan Ferrotech Limited ¹
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1008 of 2019
DATE OF ORDER	29.01.2021
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>K. B. Polychem (India) Ltd. Vs. Kaygee Shoetech Private Limited</i>
SECTION/REGULATION REFERRED	Section 8, 9 of the Code

Brief of the case:

The Appellant has challenged the impugned order of admission primarily on two grounds – (a) Demand Notice u/s 8 of the Code was not served on the Corporate Debtor; (b) Claim of the Applicant Operational Creditor was seriously disputed. The main question for consideration is whether service of Demand Notice u/s 8 of the Code on a Director of the Corporate Debtor can be construed as deemed delivery or not for Initiation of CIRP under Section 9 of the Code.

Decision:

Hon'ble NCLAT dismissed the appeal and held that,

“The legislative intent of issuance of Demand Notice under Section 8(1) is not a mere formality but a mandatory provision. Only after service of notice under Section 8(1) and on completion of 10 days, if payment towards the demand is not made, an Operational Creditor gets right to apply under Section 9 and not before such date. Upon perusal of the record, it is apparent that the Demand Notice was duly served on the functional address as well as Director of the Corporate Debtor. Under Section 2(59) of the Companies Act, 2013 Director is included in to definition of Officer. Under Section 20 of the Act a document served on a Company or on Officer thereof is service recognized. Going from Principles of Natural Justice, in terms of Section 424 of Companies Act read with above provision of Service of Notice on Director must be held to be good service. Therefore, in our opinion, the mandate u/s 8 of the Code was fulfilled, and the Adjudicating Authority has rightly admitted the application u/s 9 filed by the Operational Creditor for initiating Corporate Insolvency Resolution Process against the Corporate Debtor.”



QR CODE FOR FULL ORDER/JUDGEMENT:

¹ <https://ibbi.gov.in/uploads/order/483db1621f4f50760e40159b81c72692.pdf>