

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal(AT)(Insolvency) No. 401 of 2018**

**IN THE MATTER OF:**

**Brij Associates**

**...Appellant**

**Vs**

**Associated Lighting Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant:        Mr. Anurag Bhatt, Advocate**

**For Respondent:**

**ORDER**

**02.11.2018**        This appeal has been preferred by Appellant- Brij Associates ('Corporate Debtor') against order dated 29<sup>th</sup> May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Court-III, New Delhi whereby the application preferred by Appellant under Section 9 of Insolvency & Bankruptcy Code, 2016 (I & B Code) has been rejected on the ground(s) that the details of service of notice of default under Section 8(i) and the date of actual service of the same as also the date when the period of 10 days expired have not been stated.

Learned Counsel appearing on behalf of the Appellant referred to application under Section 9 (in Form 5 at page -211) to show that receipts and other details of date of delivery of the demand notice were enclosed.

Notice was issued on Respondent who appeared. When the aforesaid fact was brought to the notice of the learned Counsel, we allowed the parties to settle

the matter. However, the parties having failed to settle the claim, we decided to hear the case on merit.

From the impugned order, we find that the Adjudicating Authority has referred non-compliance of Section 9(3)(b) to suggest that the affidavit should have been filed by the Appellant. However, we find that such finding is contrary to the provisions of Law and the Regulation as also contrary statement made in form-5 and the enclosure attached thereto. In part-IV of form-5 while giving details of transaction on account of debt fell due and other details, the Appellant has mentioned that the 'Operational Creditor' has last received payment on 28.04.2015 from the 'Corporate Debtor' under Section 8(i) of I & B Code. It is stated that no response to the demand notice has been received by the 'Operational Creditor'. On 08.05.2013 i.e. much more than 10 days from the issuance of demand notice (dated 06.03.2018) Appellant also enclosed a copy of Service Report of Indian Post Department along with Form-5 which has also been enclosed in this appeal. These facts have not been disputed by the Respondent on its appearance. It is in this background, we had given one more opportunity to the Respondent to settle the claim but it failed avail the opportunity.

As the impugned order dated 29<sup>th</sup> May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Court-III, New Delhi being contrary to the record, we have no other option but to set aside the said order. Impugned order dated 29<sup>th</sup> May, 2018 is accordingly set aside. The case is remitted to the Adjudicating Authority to consider the application preferred by Appellant for admission and admit the same if it is complete. One opportunity may be given to the Respondent by issuing notice before admission of the said application. The

Adjudicating Authority cannot take the same ground as taken before in the impugned order nor the Respondent can take plea of pre-existence of dispute having not taken before this Appellate Tribunal.

Appeal is accordingly allowed with the aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

(Justice A.I.S. Cheema)  
Member (Judicial)

*Akc/Sk*