

**ONE PAGE #11- IN MATTER OF M/S EXPAT EDUCATIONAL INSTITUTE**  
**NCLT rejects Sec 9 Application on the grounds of Non-Representation by CD & gives directions to ROC to take appropriate action.**

**Court: NCLT-Blr & NCLAT, Chennai. (AT#41 - Dt: 23.04.2021)**

**1. Facts of the Case:**

- a. Appellant is Section 9 Applicant at NCLT Blr & Respondent is the CD
- b. Appellant is dissatisfied against the order of NCLT disposing the Sec 9 application by issuing necessary directions.
- c. NCLT made following observations & directions while disposing the application:
  1. For implementing CIRP, CD should be aware of CIRP mandates & be aware of CIRP proceedings. Principles of natural justice mandate that CD should be given proper notice; accordingly, notices were ordered on CD & case posted on various dates.; however, no reply was filed by the CD.
  2. NCLT cannot come to conclusion basing on one side version of the petitioner. Claim in question relates to year 2017 for which petitioner issued demand notice in form 3 only on 12.06.2019 and thereafter filed the instant petition in 2019 though invoices in question contemplate payment within 10 days. Application suffers from delay & latches and petitioner has not explained the reasons for such delay.
  3. As per MCA website, status of the CD is Active Non-compliant. If the CD failed to comply with statutory compliances ROC can take appropriate action to strike off and while striking off ROC can take into consideration the interest of the Petitioner in terms of provisions Companies Act and its Rules.

**2. Points of Law:** Section 9 of IB Code & Adjudicating Rules, Rule37-Show cause notice to Respondent, Rule 38-service of notice, Rule-42-Filing of Rejoinder, Rule 49-Ex-parte hearing and disposal-NCLT Rules & Sec 248 & 250 of Companies Act.

**3. Discussions, Findings & Judgment by NCLAT:**

- a. There is categorical assertion by NCLT that notice was served on Respondent twice and the affidavit of service to that effect was filed before NCLT, but the Respondent failed to appear. NCLT is duty bound to record absence, there being no representation, to hold that service was held sufficient and proceed further exparte as per Rule 49.
- b. Debt fell due on 01.02.2017 (last dt of invoice) & application was filed in 2019 which is well within period of limitation. It is clearly unsustainable in the eye of law that the application suffered from delay & latches. Further there is an acknowledgement of debt by the Director thru email dt 15.11.2017 confirming to make payment on monthly instalment basis.
- c. As per Sec 250 of Companies Act, when company stands dissolved u/s 248 the company will cease to operate and certificate of incorporation issued shall be cancelled except for the purpose of amounts due to the company and discharge of liabilities & obligation by the company. Be that as it may, NCLAT comes to an inevitable conclusion that NCLT committed an error in issuing slew of directions to ROC to examine if the CD had complied with statutory requirements etc cannot be countenanced in the eye of law.
- d. Consequently, Appeal succeeds and NCLT is directed to pass an order of admission and proceed further in accordance with law.

**-MS Mano Ranjani**

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