

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins) No. 1325 of 2025**

**IN THE MATTER OF:**

**Indo Spirits**

**...Appellant**

**Versus**

**Origin Appliances Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant : Mr. Anand Shankar Jha, Abhilekh Tiwari, Sachin Mintri, Adv.**

**For Respondents : None**

**ORDER**  
**(Hybrid Mode)**

**03.11.2025:** This appeal has been filed against the order dated 06.06.2025 by which Section 9 application filed by the Appellant has been rejected on the ground that the Appellant has failed to prove service of Section 8 notice on the CD.

2. The proof of Section 8 notice was filed alongwith Section 9 application which was notice sent by post.

3. The Adjudicating Authority held that the said notice was never served. After conclusion of the hearing, an affidavit 03.04.2025 was filed by the Appellant where the Appellant claimed service of notice through email dated 13.01.2025.

4. The Adjudicating Authority held that the said email is an after thought and dismissed the application on the ground that Section 8 notice has not been served, hence, the application is not maintainable.

5. Ld. Counsel for the Appellant challenging the order submits that the service was effected by email dated 13.01.2025. He submits that the Adjudicating Authority committed an error in rejecting the application.

6. The Adjudicating Authority in its analysis and finding in para 6 (x, xi & xii) made the following observations:-

“x. However, in the present case, the Applicant has neither demonstrated any service of the demand notice upon a Director, nor has it delivered the same to the registered address. The attempted service was limited only to the registered address and was returned undelivered with the endorsement “Addressee left without instructions.” Thus, unlike the facts in Shubham Jain (supra), where there was actual service upon an officer of the Corporate Debtor, no such effective service has taken place in the present case, and as such, the statutory mandate under Section 8 of the Code remains unfulfilled.

xi. Furthermore, the Applicant has belatedly sought to rely on alleged service of the demand notice by email, as exhibited through an additional affidavit dated 03.04.2025. This attempt appears to be a clear afterthought aimed at curing the fundamental defect in the original application pertaining to non-service of the statutory demand notice. Significantly, this affidavit was filed only after the arguments were heard and after the Respondent raised the issue of non-service during the course of the hearing. The content now sought to be introduced through this additional affidavit could and ought to have been placed on record in the rejoinder itself but was conspicuously omitted. It is evident that the email communication was not originally relied upon in the Application, and its belated introduction lacks credibility and procedural propriety. Hence, the so-called email service cannot be accepted as valid compliance with the mandatory requirement under Section 8 read with Rule 5 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

xii. In view of the foregoing, it is evident that the Applicant has failed to comply with the mandatory requirements under Section 8 of the IBC read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, particularly with respect to valid delivery of the demand notice. The alleged postal service is unsupported by any acknowledgment or proof of delivery, and the subsequent reliance on email communication introduced through an additional affidavit filed midway through the proceedings is clearly an afterthought and procedurally deficient. The statutory pre-conditions for initiating proceedings under Section 9 of the Code have not been fulfilled. Consequently, the application is premature and not maintainable and is therefore liable to be rejected.”

7. By the mode of service as claimed in Section 9 application, service of Section 8 notice has not been proved and it was rightly held by the Adjudicating Authority that notice has not been serviced.

8. The Appellant relied on email dated 13.01.2025 after conclusion of the hearing by filing an affidavit. When the hearing has been concluded, we are of the view that no further affidavit could have been looked into and the finding of the Adjudicating Authority that the affidavit which was filed only after the arguments were heard and after the Respondent has raised the issue of non-service during the course of hearing is sufficient reason for rejecting Section 9 application.

10. The Adjudicating Authority has rightly held that the said affidavit lacks credibility and there being non-compliance of mandatory requirement of Section 8, Section 9 application could not be admitted.

11. We are of the view that that the Adjudicating Authority did not commit any error rejecting Section 9 application on the ground of non-service of notice.

12. We, however, observe that the application having been rejected on the ground of non-service of notice, it shall be open for the Appellant to file fresh application after serving notice under Section 8 in accordance with law.

13. With these observations, we dismiss the appeal.

**[Justice Ashok Bhushan]  
The Chairperson**

**[Barun Mitra]  
Member (Technical)**

*Sheetal/Manu*