

NCLT clarifies issuance & service of demand notice u/s 8(1) IBC is mandatory pre-condition for initiating insolvency proceedings u/s 9 IBC

The NCLT New Delhi in the case of **Delhivery Ltd. vs Futuretimes Technology India Pvt Ltd. [Company Petition IB (IBC)/169(ND)2023]** dated July 22, 2025, has held that where a demand notice is returned unserved with the remark “addressee has left without instruction” and no subsequent service is effected via email or other electronic means, then the service cannot be deemed valid. The NCLT also added that the operational creditor is obligated to ensure actual or constructive service of the demand notice before initiating insolvency proceedings, as failure to do so would render the Section 9 application under the Insolvency and Bankruptcy Code, 2016 (IBC) liable to be dismissed as not maintainable.

Referring to the decision of the Apex Court in the case of *Macquarie Bank Limited v. Shilpi Cable Technologies Ltd.* [(2018) 2 SCC 674], where it was clarified that actual delivery of the notice is essential and non-service of the demand notice would render the application u/s 9 non-maintainable, the NCLT observed that issuance and service of demand notice under Section 8(1) of the IBC is a mandatory pre-condition for initiating insolvency proceedings under Section 9.

The NCLT noted that the demand notice sent via email to addresses obtained from the GST portal returned undelivered, and the demand notice issued via registered post also returned unserved with the endorsement “addressee has left without instructions”, and thereafter, no subsequent successful attempt was made as per under Rule 5(1) of the I&B (Adjudicating Authority) Rules, 2016 to effect service by alternate permitted modes. The Adjudicating Authority, therefore, pointed out that any Section 9 application filed in such circumstances is liable to be rejected as not maintainable for failure to fulfil the mandatory pre-condition of serving a valid demand notice.

Accordingly, observing that where the existence or operational status of the Corporate Debtor cannot be ascertained and the mandatory requirement of service u/s 8 of IBC remains unfulfilled, the application u/s 9 cannot be entertained, the NCLT dismissed the application u/s 9 of IBC for initiating CIRP against the Appellant-Corporate Debtor.