

(2019) 08 NCLT CK 0099

In the National Company Law Appellate Tribunal

Case No : Company Petition No. 192(ND) Of 2017

Dimple Mahna

APPELLANT

Vs

Bodysterone Foods Pvt. Ltd.

RESPONDENT

Date of Decision : 02-08-2019

Acts Referred:

Companies Act, 2013 — Section 241, 242

Citation : (2019) 08 NCLT CK 0099

Hon'ble Judges : Ina Malhotara, J; L.N. Gupta, Member (Technical)

Bench : Division Bench

Advocate : Hemant Lamba, Afnaan Siddiqui

Final Decision : Dismissed

Judgement

1. The file has been taken up on the application of Respondent No. 2, for setting the aside final order dated 10.05.2018 disposing off the petition under section 241-242 of the Companies Act, 2013, being CP No. 192/2017. The respondent had been proceeded ex parte as they failed to contest the allegations made against them. The relief granted to the petitioner was required to be executed by way of a decree before the Civil Court.

2. Upon the execution petition being filed before the Civil Court, the respondent no. 2/applicant has now filed the present application, CA 24/2019, praying for setting aside order/decreed dated 21.05.2019. The ground on which the prayer has been made for setting aside the ex parte order is founded on the assertion that the respondent/applicant was never served with any notice in this case. Further he was hospitalized for a heart problem and had been advised bed rest in the month of July, 2018 and again in January, 2019. It was only after this period that he could file the present petition, after acquiring knowledge of the ex parte order through the executing Court. His

application is duly supported by his affidavit.

3. The petitioner in her reply has refuted the submissions made by the Respondent. Given the allegations of the respondent applicant that he was proceeded ex parte without due notice of the petition being effected on him, it became expedient for this Bench to look into the service report. As per the affidavit of service, steps for effecting notice had been taken Dasti by the petitioners by post as well as by hand. While notices sent vide registered post were returned back unserved with the report 'Unclaimed', notices effected by hand were duly served. Notice on respondent No. 2/applicant had been effected on Mr. Praveen Lamba under his signature. Mr. Praveen Lamba is the father of the respondent and is residing at the same address. In respect of the other Director Respondent No. 2, who is the brother of the respondent No. 1 /applicant, notice was accepted by his wife Mrs. Preeti Lamba and bears her signatures in acknowledgement of having received the same.

4. In view of the steps taken for service which were duly acknowledged by the residents of the same house, being the father of the Respondent/applicant and wife of his brother Respondent No. 3, it cannot be said that no service of the notice of filing of the petition was brought to their notice. Despite the same, if they failed to contest the proceedings, they cannot seek to set the clock back and contest the same now.

5. The petitioner in her reply has vehemently opposed the prayer made herein. It is her case that the respondent applicant always had knowledge of the pendency of the proceedings but deliberately chose not to contest it. She has cogently been able to show service being effected by hand on the father of the Respondent No. 2 and wife of Respondent No. 3, who are residents of the same house. The signature affixed in acknowledgment of receipt are not repudiated. Further the respondents did not accept notice sent vide registered post which returned back with the report ""unclaimed"", under such circumstances, the submission that service was not effected on the respondents cannot be accepted.

6. The petitioner has also pointed out that the application is highly belated and barred by limitation. Even as per the respondent/applicant he acquired knowledge of the impugned order long back but took no steps for setting it aside. He seeks to rely upon his medical records, but these relate to a much

latter period. Further his submission that he was advised bed rest is not corroborated by any medical record.

7. There is no illegality in the order proceeding against the respondents ex-parte and therefore the clock cannot be turned back to grant the applicants

the benefit of contesting the petition again.

8. The submissions are devoid of any merit. CA 24/2019 stands dismissed.