

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) Nos. 1289 of 2019

IN THE MATTER OF:

Meka Dredging Company Pvt. Ltd. Appellant

Vs

Sapura Engineering & Construction (India) Pvt. Ltd. Respondent

Present:

**For Appellant: Mr. Mitesh Jain and Ms. Shruti Pandey,
Advocates.**

For Respondent: Mr. Arpan Behl, Advocate.

ORDER

19.11.2019 This Appeal has been preferred by Meka Dredging Company Pvt. Ltd. ('Corporate Debtor' in Liquidation and represented through 'Liquidator') against order dated 23rd September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, wherein, an application Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**') filed by 'Corporate Debtor' (under Liquidation Scheme) as 'Operational Creditor' for initiation of 'Corporate Insolvency Resolution Process' against Sapura Engineering & Construction (India) Pvt. Ltd. was rejected.

2. The learned Counsel appearing on behalf of the Appellant M/s Meka Dredging Company Pvt. Ltd. ('Corporate Debtor' under 'Liquidation') submitted that there is no pre-existing dispute. When we pointed out to the Counsel that an application is not maintainable in view of the prohibition under Section 11(d) of the I&B Code, learned Counsel for the Appellant

(‘Corporate Debtor’) mentioned that the Appellant cannot be treated to be a ‘Corporate Debtor’ for the purpose of present case, as it has filed application under Section 9 of the I&B Code as an ‘Operational Creditor’. He further submitted that the provision of Section 11(d) is not applicable.

3. The submission as made by the learned Counsel for the Appellant cannot be accepted in view of the specific prohibition made under Section 11 clause (d) of the I&B Code, which reads as follows: -

“11. Persons not entitled to make application.-- *The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely:--*

- (a) a corporate debtor undergoing a corporate insolvency resolution process; or*
- (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or*
- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or*
- (d) a corporate debtor in respect of whom a liquidation order has been made.*

Explanation.-- For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.”

4. In the present case, as we find that the Appellant is a 'Corporate Debtor', in respect of whom 'Liquidation Order' has been made, cannot make an application for initiation of 'Corporate Insolvency Resolution Process' under Chapter II, which includes application under Section 9. For the said reason, even if, it is accepted that there is no pre-existing dispute, we hold that application under Section 9 preferred by Meka Dredging Company Pvt. Ltd. (the 'Corporate Debtor' under Liquidation') is not maintainable. The Appeal is accordingly dismissed.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

Ash/GC