

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.1066 of 2019

IN THE MATTER OF:

Aurora Accessories Pvt. Ltd.

...Appellant

Versus

Ace Acoustics & Audio Video Solutions Pvt. Ltd.

...Respondent

**For Appellant: Shri Rakesh Kumar, Shri Ankit Sharma and Shri
Himanshu K.S. Tanwar, Advocates**

For Respondent: Shri Ishan Bisht, Advocate

O R D E R

28.01.2020 Learned Counsel for Appellant as well as the learned Counsel for the Respondent are heard. This Appeal arises out of Impugned Order dated 9th August, 2019 passed by the Adjudicating Authority (National Company Law Tribunal, Guwahati Bench, Guwahati) in CP(IB) No.15/GB/2019. The Application was filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC – in short) by the Appellant against the Respondent – Corporate Debtor. The Appellant claimed that the Appellant was an Operational Creditor and claimed that there were arrears of rent to the extent of Rs.38,52,937/- which with interest had become Rs.49,09,072/-. The Adjudicating Authority considered the Application under Section 9 and came to a conclusion as under:-

“7. In view of the foregoing discussions, we have no hesitation in holding that the debt arising out of non-payment of lease rent does not fall under the definition of “operational debt” as defined u/s 5(21) of the Code of 2016 (even though it may otherwise be a debt), and the petitioner cannot be termed as an “Operational creditor”

within the meaning of Section 5(20) and for the purpose of the Code of 2016. We are therefore unable to interfere in the matter, and the petition is accordingly dismissed. No costs.”

2. Learned Counsel for the Appellant is relying on the Judgement in the matter of **“Sarla Tantia vs. Ramaani Hotels & Resorts Pvt. Ltd.”** in Company Appeal (AT) (Insolvency) No.513 of 2018 passed by Division Bench of this Tribunal on 26th February, 2019. The Counsel states that in this Judgement in the matter of “Sarla Tantia” also, claim was with regard to lease rent and the Section 9 Application was directed by this Tribunal to be admitted by the Adjudicating Authority.

3. The learned Counsel for the Respondent submits that the Application under Section 9 has been rightly rejected by the Adjudicating Authority. It is stated that this Tribunal has recently in the Judgement in the matter of **“Mr. M. Ravindranath Reddy Versus Mr G. Kishan & Ors.”** in Company Appeal (AT) (Insolvency) No.331 of 2019 by three Judges Bench on 17th January, 2020 specifically discussed the issue whether or not claim for lease rent under Section 9 could be treated as “operational debt” or it is mere debt, and found that the dues could not be said to be “operational dues”.

4. We have heard Counsel for both sides. We have perused the record. Perusal of Judgement in the matter of “Sarla Tantia” (supra) shows that in that matter status of the parties as Operational Creditor and Corporate Debtor was not in issue. This Tribunal has in the Judgement in the matter of “Mr. M. Ravindranath Reddy” specifically considered issue whether a landlord by

providing lease could be treated as Operational Creditor. After considering provisions, it was held:-

“Therefore, we are of the considered opinion that lease of immovable property cannot be considered as a supply of goods or rendering of any services and thus, cannot fall within the definition of ‘Operational Debt.’”

5. In view of the Judgement of this Tribunal dated 17th January, 2020, which matter specifically dealt with the issue, we do not find substance in this Appeal. The issue regarding question whether lease rent amounts to operational debt, has already been decided and on the basis of such claim, Application under Section 9 cannot be maintained.

6. We do not find any substance in the Appeal. There is no reason to interfere with the Impugned Order.

The Appeal is dismissed. No orders as to costs.

The Appellant would be at liberty to pursue its remedy for rent dues in accordance with law.

[Justice A.I.S. Cheema]
Member (Judicial)

(Justice A.B. Singh)
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/md