

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insol.) No. 75 of 2017

IN THE MATTER OF:

Satish Mittal

...Appellant

Vs.

Ozone Builders & Developers Pvt. Ltd.

... Respondent

Present: For Appellant:- Shri Rishi Sood, Advocate

For Respondent:- Shri Abhishek, Advocate

ORDER

13.07.2017 This appeal has been preferred by the appellant against the order dated 24th April, 2017, passed by Ld. Adjudicating Authority (National Company Law Tribunal), (hereinafter referred to as the "Tribunal") Principal Bench, New Delhi, whereby and whereunder application preferred by the appellant under section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as I&B Code 2016) has been rejected on the ground that the appellant is not an 'Operational Creditor' as defined under sub section (20) read with sub-section (21) of Section 5 of the I&B Code 2016.

2. Ld. Counsel appearing on behalf of appellant submits that appellant deposited a sum of Rs.30 lacs with Respondent/Corporate Debtor for booking a plot in Ozone City, Aligarh. The receipt was granted on 22nd February 2013 (vide Annexure 5-B) wherein it is mentioned that in case of non-confirmation of booking within one year, the amount will be refunded without interest. It is contended that the amount of booking has not been confirmed within one year as the respondent failed to refund

the amount and there being default of debt the application under section 9 of I&B Code, 2016 was maintainable.

3. We have heard Ld. Counsel for the appellant and perused the record. There is nothing on the record to suggest that the appellant reached any agreement with the respondent/corporate debtor for purchase of a plot in Ozone City, Aligarh. A receipt has been enclosed which shows that an amount of Rs.30 lacs was deposited in advance in cash on 22nd February 2013 for booking of plot in 'Ozone City', Aligarh and in case of non-confirmation of booking within one year the amount is required to be refunded without interest.

4. Sub-section (20) of section 5 defines 'Operational Creditor' as follows:

"operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred"

5. Sub-section (21) of Section 5 defines 'Operational Debt' which reads as follows:

"operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority"

6. Admittedly, the appellant has not made any claim in respect of goods. The appellant has also not rendered any services for which he is entitled to claim any amount. It is not the case of the appellant that he was in employment or a debt in respect of repayment of dues arising under any law is due to him. As the dues to which the appellant claim does not arise under any law for the time being in force and merely based on the receipt, we find no ground to interfere with the impugned order of rejection of application under section 9 in absence of any merit.

The appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Balvinder Singh)
Member(Technical)

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