

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 331 of 2019

IN THE MATTER OF:

M. Ravindranath Reddy

...Appellant

Vs.

Mr. G. Kishan & Ors.

...Respondents

Present: For Appellant: - Mr. Buddy A. Ranganadhan and Ms. Aditi Sharma, Advocates.

For Respondents: - Mr. Saurabh Jain and Mr. Siddharth Jain, Advocates.

O R D E R

26.08.2019— One of the questions arise for consideration in this appeal is whether 'landlord' can claim to be an 'Operational Creditor' within the meaning of Section 5(20) read with Section 5(21) of the Insolvency and Bankruptcy Code, 2016.

'Operational Creditor' as defined under Section 5(20) means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. Sub-section (21) of Section 5 defines 'Operational Debt' means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being

Contd/-.....

in force and payable to the Central Government, any State Government or any local authority.

Therefore, to decide the aforesaid issue, it is required to be decided whether the 'landlord' is rendering services by letting a premises on rent. The Central Government/ State Government may charge service tax for letting the premises on rent, though it may waive service tax if rent is below certain amount.

The Central Government/ State Government if charges service tax for letting a premises on rent and the concerned person ('Corporate Debtor') failed to pay the same, concerned Government may claim to be an 'Operational Creditor'. If that be so, the 'landlord' may also claim to be rendering services by letting premises for which it is liable to recover the service tax and thereby may claim to be an 'Operational Creditor'.

Though the aforesaid issue is involved in this appeal apart from the other issues as raised in this appeal, but in view of the fact that the matter is pending consideration before the Hon'ble Supreme Court in Civil Appeal No. 3977 of 2019, we are not deciding such issues as the parties may raise all the issues before the Hon'ble the Supreme Court. It is expected that the parties will bring the aforesaid issue to the notice of the Hon'ble Supreme Court.

Let the appeal await the decision of the Hon'ble the Supreme Court of India in Civil Appeal No. 3977 of 2019.

Post the matter 'for orders' on 4th November, 2019. The parties will inform the development.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Ar/g