

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1218 of 2019

IN THE MATTER OF:

Indiabulls Distribution Services Ltd. Appellant

Vs

M/s Rudra Buildwell Homes Pvt. Ltd. Respondent

Present:

**For Appellant: Mr. Rudreshnar Singh, Mr. Gautam Singh,
 Ms. Isha Singh, Ms. Snehil Sonam and
 Mr. Aditya V. Singh, Advocates.**

ORDER

13.11.2019 The Appellant – Indiabulls Distribution Services Ltd. filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**') for initiation of 'Corporate Insolvency Resolution Process' against M/s Rudra Buildwell Homes Pvt. Ltd. The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench by impugned order dated 27th September, 2019 while rejecting the application on merit, made following observations: -

“15. Evidently, as per the Clause 6 of the Agreement dated 11.06.2015 the Petitioner was entitled for brokerage on booking of 50 Units, against which only 12 units were booked. Therefore, this Bench is of the view that Petitioner has failed to fulfill their contractual obligation and establish default by the Respondent.”

2. The learned Counsel appearing on behalf of Appellant while arguing on merit also submitted that the observation at paragraph 15, as quoted by the Adjudicating Authority was uncalled for.

3. From the record we find that the Appellant failed to make out a case of default on the part of the 'Corporate Debtor'. In fact, there is a doubt about the status of the Appellant, i.e., as to whether the Appellant comes within the meaning of 'Operational Creditor', being 'Marketing Associate' of the 'Corporate Debtor'. In any case, in absence of any default on the part of the Respondent and that the Agreement was not acted upon as noticed by the Adjudicating Authority, we find no case is made out for initiation of proceedings in terms of Section 9 of the I&B Code against the 'Corporate Debtor'.

4. However, we are of the view that merely on the basis that the Appellant has failed to comply with the Agreement, in a petition under Section 9, any adverse remarks made by the Adjudicating Authority was uncalled for.

5. In the circumstances while we affirm the substantive part of the order regarding dismissal of application under Section 9 of the I&B Code and set-aside paragraph 15 of the impugned order dated 27th September, 2019, so far it relates to observation made by the Adjudicating Authority with regard to the Appellant. The Appeal stands disposed of with aforesaid observations.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Venugopal M.]
Member (Judicial)