

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-V

Under section 9 of the Insolvency & Bankruptcy Code, 2016

CP (IB) No.2290/2019

Dhaval Ranchhod Patel ... Operational Creditor

Versus

Neumec Estate Developers LLP ... Corporate Debtor

CP (IB) No.2508/2019

Ranchhod Ganesh Patel ... Operational Creditor

Versus

Neumec Estate Developers LLP ... Corporate Debtor

Order delivered on: 30.04.2020

Coram:

Hon'ble Member (Judicial) : Smt Suchitra Kanuparthi

Hon'ble Member (Technical) : Shri V. Nallasenapathy

Appearances (in both petitions):

For the petitioner : Ms Archana R Patil i/b M/s
Jurists Uno

For the respondent : Mr Rajan Agarwal,
Advocate

COMMON ORDER

Per: V. Nallasenapathy, Member (Technical)

1. These two company petitions are taken together for consideration since the issues involved in both the petitions are similar and the corporate debtor is same in both the petitions.

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2. On hearing the Counsel for both side and going through the pleadings, the following points emerges in these petitions:
 - a. The petitioners were tenants in a building complex. The petitioners, the corporate Debtor and the owner of the premises had entered into an agreement for permanent alternate accommodation on 21 July 2011, wherein the corporate Debtor agreed to demolish the existing structure and construct and handover flat measuring 350 ft² to each of the petitioners. The corporate Debtor agreed to pay the petitioners/ tenants, compensation for temporary transit accommodation at certain rate till the handing over of the completed flats by the Corporate Debtor along with occupational certificate.
 - b. Corporate Debtor completed the construction and handed over flats to other eight tenants , pending receipt of occupancy certificate, in December 2016. But these two petitioners, refused to take possession of the flats, on the ground that the corporate Debtor failed to get occupancy certificate for the premises from the local authority and hence claimed the monthly compensation/rent for transit accommodation as an operational creditor for the period from 16.12.2016 to 31.03.2019, by sending section 8 notice to the corporate Debtor and demanded the reimbursement of rent along with interest at the rate of 15% per annum. Since the corporate Debtor failed to make the payment as demanded, the petitioners are before us by filing petitions under section 9 of the code. The claim amount is Rs.14,72,154/- in CP No.2290/2019 and Rs.14,75,446/- in CP No.2508/2019.
3. This bench is of the considered view that the compensation claim by the petitioners is nothing but reimbursement of rent paid by them. Hence these petitions are claims for rent.

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4. The Hon'ble NCLAT, in the case of *M.Ravindranath Reddy Vs. G. Kishan and Ors.* MANU/NL/0016/2020, held as below:

"28. For an amount to be classified for an operational debt under I&B Code, 2016, it is provided:

Firstly, the amount falls within the definition of "claim" as defined under Section 3(6) of the Code;

Secondly, such a claim should claim within the confines of the definition of a 'debt' as defined under Section 3(11), meaning it should be by way of a liability or obligation due from any person;

Thirdly, such a "debt" should fall strictly within the scope of an "Operational Debt" as defined under Section 5(21) of the Code, i.e. the claim should arise in respect of

- (i) provision of goods or services including employment or*
- (ii) A debt in respect of the repayment of dues arising under any law for the time being in force and payable either to the Central Government, any State Government or any local authority.*

"29. The word "in relation to Government" or local authority and the dues owed to it, has been given a wide platform. It is important to see whether persons other than the Government or local authority can claim the benefit, that any debt owed should be construed as an 'operational debt' other than those classified as 'financial debt'.

"30. Thus, only if the claim by way of debt falls within one of the three categories as listed above, can be categorised as an operational debt. In case if the amount claimed does not fall under any of the categories mentioned as above, the claim cannot be categorised as an operational debt, and even though there might be a liability or obligation due from one person, namely Corporate Debtor to another, namely Creditor other than the Government or local authority, such a creditor cannot categorise itself as an "Operational Creditor" as defined

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under Section 5(21) of the I&B Code, 2016. 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 or 'Operational Debt'.

5. The debt claimed in these petitions being rent, when the ratio laid down in the judgement cited *supra*, is applied to the facts of the cases on hand, the petitions are liable to be dismissed.
6. Further, the letters of the corporate Debtor dated 2 January 2017 and 3 January 2017, have been placed on record. Broadly, these letters are identical in nature in both the petitions. The gist of these letters is that the flats were almost ready for occupation, except for fitouts to the satisfaction of the allottees, and that keys had been handed over to the allottees to enable them to carry out fitouts to their liking. Further, the possession of the flats had also been handed over to the allottees in anticipation of occupancy certificate from the Municipal Corporation of Greater Mumbai.
7. While other tenants in the same complex have accepted the possession of the flats sans occupational certificate, these petitioners with an intention to get more money from the Corporate Debtor refused to take possession even though the flats are ready, filed these petitions only with an intention to recover the money, as if the proceedings under the Code are recovery proceedings.
8. In the light of the above discussion, both the petitions are dismissed.

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9. The right of the petitioners before any other judicial forum shall not be prejudiced on grounds of dismissal of the present petitions by this Adjudicating Authority.

10. No orders as to cost.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)