

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.174/NCLT/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

Bharat Doshi

...Operational Creditor

v/s.

Autobahn Automotive Private Limited

[CIN: U50102MH2013PTC240809]

...Corporate Debtor

Order Delivered on: 16.06.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Mr. Nishit Gandhi, Advocate.

For the Respondent : Mr. Kishore Salunkhe, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Bharat Doshi, ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Autobahn Automotive Private Limited ("the Corporate Debtor"), [CIN: U50102MH2013PTC240809].

2. The present petition was filed on 19.02.2020 by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of Rs.3,58,55,270/- (Rupees three crore fifty-eight lakh fifty-five thousand two hundred seventy only). including the interest at the rate of 18% p.a.
3. The case of the Operational Creditor is as under:
 - a) The Operational Creditor is the Proprietor of Amar Properties. Amar Properties is the owner of the premises comprising of Ground plus 2 Floors admeasuring about 3000 Sq. Ft. situated at Amar Enterprises Business Complex, CTS No. 116, Kala Marg, Kurla, Mumbai-400070. The said premises were given on Lease to the Corporate Debtor on Leave and License basis for a period of 55 months starting from 01.07.2014 and ending on 30.12.2018.
 - b) By way of a letter dated 19.09.2018 the Operational Creditor, called upon Corporate Debtor to vacate the said premises thereby terminating the aforesaid mentioned Agreement. On 16.11.2018, the operational creditor raised an invoice on corporate debt for views of the terrace space admeasuring around 10,000 Sq. Ft. in the said premises. The Said terrace space was allowed to be used by Corporate Debtor for its Automobile Service Workshop. Based on such mutual understanding, the lease rent was decided based on a rate of Re. 1/- per Sq. Ft. per day, which was far lower than the prevailing market rate at that time. The said terrace space was used for storage of good and ancillary workshop related work. As a result of the said arrangement, a bill dated 16.11.2018 was raised for use of terrace space from September 2015 to August 2018 i.e. the time for which the sales space was used by the Corporate Debtor before issuing the termination notice on 19 September, 2018. The said invoice came to

be delivered on 17.11.2018. The Corporate Debtor replied to the said letter vide its letter dated 26.11.2018 refusing to pay the said charges.

- c) Operational Creditor also raised an invoice dated 08.01.2019 for use of open car parking space for the period beginning from 10.10.2018 to 31.01.2019. This invoice was raised for the use of additional car parking space even after the termination of the Leave and License Agreement and also payable by the Corporate Debtor. The Corporate Debtor has not replied to the said invoice.
- d) It was an agreed position between the parties that for any use of the premises after the termination of the Leave and License Agreement, the Licensee shall be liable to pay the rent at two times of the original rent as per the Agreement. Since the agreement was subsisting only up to 31.01.2019, the licensee was liable to pay the rent for the use of the same premises at double the rates as per clause 5 (p) of the said Agreement post 31.01.2019 i.e. from February, 2019 onwards.
- e) However, in response to the termination notice dated 19.09.2018, the Corporate Debtor refused to vacate the premises and continued to enjoy and use it. The Corporate Debtor even filed a suit in the Small Causes Court seeking Injunction of the Operational Creditor from obstructing ingress and egress of the employees and other persons working for Corporate Debtor. Further, an ad-interim injunction was sought claiming that the License period as per the aforementioned Agreement was 66 months instead of 55 months as claimed by the Operational Creditor.
- f) By way of an order dated 15.02.2019 an ad-interim Injunction was granted to Corporate Debtor and the Operational Creditor was prohibited from obstructing the ingress and egress of the employees and workmen of

the Corporate Debtor. the said order was challenged in Appeal before the Small Causes Court which was heard by a Division Bench and the same was set aside. As such the ad-interim Injunction granted to Corporate Debtor was withdrawn by an order dated 28.08.2019.

- g) On 04.09.2019, the Operational Creditor sent a reminder letter seeking payment of the two invoices dated 16.11.2018 and 08.01.2019 and rents at double the rate i.e. Rs.24,31,1000/- (Rupees twenty-three lakh thirty-one thousand only) per month along with applicable interest at 18% p.a. on and from February, 2018. An Email was also sent by the Operational Creditor along with the reminder letters to the Corporate Debtor seeking payment of the dues.
 - h) In the letter sent by the Corporate Debtor, it was stated by the Corporate Debtor that possession was already handed over to the Operational Creditor. However, no formal documents/evidence has been stated clearly mentioning the date of handing over of the possession by the Corporate Debtor.
4. The Corporate Debtor has issued Demand Notice dated 09.10.2019 to the Corporate Debtor in Form 4 under section 8 of the Code claiming the total outstanding of Rs.3,58,55,270/- (Rupees three crore fifty-eight lakh fifty-five thousand two hundred seventy only). The Corporate Debtor has replied to said Demand Notice vide its letter dated 16.10.2019 denying the liability to pay the debt but without denying their actual use and occupation of the said premises based on Leave and License Agreement.
5. The case of the Corporate Debtor is as under:
- a) The Operational Creditor, a landlord of the premises on the Ground Floor, North Light Factory Shed, situated at Amar Automotive Business

Complex, bearing CTS No. 116, Kala Marg, Kurla, Mumbai-400070 and the relation between the landlord and the Corporate Debtor are of Licensor and the Licensee on virtue of leave and license agreement which was registered agreement before the Sub Registrar of Assurance and terms and conditions are reduced in the said agreement. The Corporate Debtor has already filed the L.D. Suit No. 177 of 2018 and the same is pending for trial and leading the evidence.

- b) Hon'ble Small Cause Court vide its order dated 18.06.2019 in LD Suit No. 177 of 2018, had directed to the Corporate Debtor to handover peaceful possession of the Premises to the Operational Creditor on or before 30.06.2019 and at the same time, Operational Creditor was directed to refund the security deposit of Rs.60,00,000/- after adjusting the arrear rent amount to the Corporate Debtor. Accordingly, the Corporate Debtor complied the order but the Operational Creditor failed to return the balance amount of Rs.60,00,000/-and adjusted the same against illegal charges.
- c) The Operational Creditor had filed an application in the Hon'ble Small Cause Court in Exhibit No.27 of L.D. Suit No.177 of 2018 wherein he had prayed for directions to the Corporate Debtor to make payment the total outstanding amounts, which is illegal and extortion. However, the Hon'ble Small Cause Court was pleased to reject the said application as prima facie the Operational Creditor was unable to prove the liability of the Corporate Debtor to the amount of Rs.2.50 crore.
- d) The Operational Creditor has wrongly claimed the period of 55 months commencing from 01.07.2014 to 31.01.2020, which, in fact, total to 66 months period. Hence, there is a huge difference of 11 months between the claim of the Operational Creditor and the actual period. The

Operational Creditor was issuing invoices and demand notices post June 2019 after handover of the premises to the Operational Creditor till October, 2019 along with illegal interest of 18% p.a. even after handing over the possession of the property to the Operational Creditor on 30.06.2019. Thereafter, the Corporate Debtor responded to the Operational Creditor's demand notice dated 09.10.2019 by a rejoinder on dated 16.11.2019 clarifying the matter and requesting for refund of the balance amount of the aforesaid security deposit. The claim of the Operational Creditor is disputed by the Corporate Debtor.

6. The Operational Creditor has filed Affidavit in Re-joinder and submits as under:
 - a) The bet has arisen on account of Leave and License Agreement between the Operational Creditor and the Corporate Debtor. The Corporate Debtor has not denied that the Corporate Debtor actually occupied the premises of the Operational Creditor even beyond the period of termination, or even beyond the Leave and License Agreement, and the Corporate Debtor is suggesting a remedy according to its own preference, which it is humbly prayed is beyond domain of the Corporate Debtor and in any case uncalled for.
 - b) The Corporate Debtor has purposely not mentioned that of the total claim of Rs.3,58,55,270/-, a sum of Rs.1,98,17,347/- is in respect of occupation of the premises even after the termination of the Agreement, Rs.1,35,37,398/- is in respect of excess use of the terrace of 10000 sq. ft. and Rs.25,00,125/- is in respect of excess use of parking spaces.
 - c) The Corporate Debtor filed the suit for seeking directions from the Hon'ble Small Cause Court to allow its employees to use and occupy the

said premises of the Operational Creditor, for the purpose of its business, even after termination of the Agreement. The Corporate Debtor has forcefully kept the possession of the said premises with himself. The Appellate Hon'ble Small Cause Court vide order dated 20.08.2019 directed the Corporate Debtor to vacate the premises of the Operational Creditor.

- d) The Corporate Debtor admitted that the Agreement is binding on the Corporate Debtor. The Corporate Debtor has also not disputed that the Agreement terminated on 19.09.2018. The liability of the Corporate Debtor to pay twice the amount of rent has actually arisen after the termination of the said Agreement.
- e) The amount due and payable to the Operational Creditor falls within the ambit of Section 3 (11) r/w Section 5 (21) of the Code. This view is also affirmed by the Hon'ble NCLAT in the case of *Anup Sushil Dubey v/s National Agriculture Co-operative Marketing Federation, Company Appeal (AT) (Insolvency) 229 of 2020*.
- f) It is not disputed that the Corporate Debtor entered into a registered Leave and License Agreement with the Operational Creditor for occupation of his premises at a monthly rent and bind itself the terms of the said Agreement. The Corporate Debtor admittedly, agreed to, acknowledged and also accepted the terms of the Agreement between the Operational Creditor and the Corporate Debtor. The Corporate Debtor occupied the terrace and Car parking spaces in excess of the area specifically demarcated for the Corporate Debtor as per the Leave and License Agreement.

7. The Operational Creditor has filed its Written Submissions and submits as under:

- a) As such in view of section 3 (11) of the Code there is a debt due from the Corporate Debtor to the Operational Creditor. Going further the present Petition is filed by Operational Creditor since the debt as defined in section 5 (21) of the Code defined what is an Operational Debt. The word operational is not defined in the Code. As such the ordinary dictionary meaning of the said word deserved to be applied in interpreting the said word. As per the Merriam Webster's Dictionary the word 'Operational' means of or relating to operation or of or relating to or based on operations". As per the Oxford English Dictionary the word "Operational" means "connected with the way in which a business, machine, system etc works". The word operation in turn means "a business transaction".
- b) With these facts, the Operational Creditor submits that the issue as to whether license fee/rent is in the nature of Operational Debt and whether an application for initiation of Corporate Insolvency Resolution Process is maintainable for non-payment of the said license fee/rent is already decided in favour of the Operational Creditor here in the following judgments:

Anup Sushil Dubey Vs. National Agriculture Co-operative Marketing Federation of India Ltd (insolvency) 229/2020.

[Vide order dated 07.10.2020 after considering M. Ravindranath Reddy Vs. G. Kishan, (Company Appeal (AT) (Ins) No.331 of 2019]

Wherein it is held as follows:

“10. Heard both sides at length. The main issues which fall for consideration in this Appeal are;

(a) Whether dues, if any, arising from the ‘Leave and Licence Agreement’ is construed as an ‘Operational Debt’?

(b) Whether there is any ‘Pre-Existing Dispute’ prior to the issuance of the Demand Notice?

11. In order to prove a ‘Debt’ as an ‘Operational Debt’ the criteria that needs to be met is as follows;

(a) Claim in respect of provisions for goods and services

(b) Employment or debt in respect of dues and (c) Such repayment of dues which should arise under any law in force at that time.

12. To ascertain the same, it is essential to reproduce the relevant definitions as enumerated in the code;

“Section 3(6): “claim” means –

(a) A right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) Right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

Section 3(11): “debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

Section 3(12): “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not 1[paid] by the debtor or the corporate debtor, as the case may be;

Section 5(20): “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;

Section 5(21): “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the 1[payment] 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;”

13. Learned Counsel for the Appellant relied on a decision of this Tribunal in M. Ravindranath Reddy V/s. G Kishan, [Company Appeal (AT) (Ins) No. 331 of 2019 wherein it is observed that the Appellant being a tenant, having not made any claim in respect of the provisions of the goods or services and debt in respect of repayment of dues does not arise under any Law for the time being in force payable to the Central Government or State Government. It was also observed as follows; “31. In case of lease of immovable property, Default can be determined, on the basis of evidence. While exercising summary jurisdiction, the Adjudicating Authority exercising its power under Insolvency and Bankruptcy Code 2016, cannot give finding regarding default in payment of lease rent, because it requires further investigation” (Emphasis Supplied)

14. Learned Counsel for the Respondent relied on Judgements of this Tribunal in Sarla Tantia V/s. Nadia Healthcare Pvt. Ltd. [Company Appeal (AT) (Ins) No. 513 of 2018] and in Jindal Steel and Power Pvt. Ltd. V/s. DCM International Ltd. [Company Appeal (AT) (Ins) 288 of 2017.

15. In *Sarla Tantia V/s. Ramaanil Hotels & Resorts Pvt Ltd.*, this Tribunal while dealing with dues arising from the terms of the Leave and Licence Agreement held and observed it to be an 'Operational Debt'. This Tribunal in *Citycare Super Specialty Hospital V/s. Vighnaharta Health Visionaries Pvt. Ltd.* has also observed that there is an admission of rent of certain periods to be due and payable which are reflected in the Books of Accounts, but subsequently, dismissed the 'Appeal' on the ground of 'Pre-Existing Dispute'.

16. The law has not gone into defining goods or services – hence, one has to rely on general usage of the terms so used in the law, with due regard to the context in which the same has been used. Simultaneously, it is also relevant to understand the intention of the lawmakers. **The Bankruptcy Law Reforms Committee (BLRC)**, in its report dated November 2015, indicates “the lessor, that the entity rents out space from is an operational creditor to whom the entity owes monthly rent on a three-year lease”. Hence, the BLRC recommends the treatment of lessors/landlords as Operational Creditors. However, in the definition adopted by the Legislature only claims relating to 'Goods and Services' were included within the definition and purview of 'Operational Debt'.

17. The Hon'ble Supreme Court in *Mobilox Innovations Private Limited V/s. Kirusa Software Private Limited* (2018) 1 SCC 353 in Para 5.2.1 observed as hereunder;

“5.2.1 Who can trigger IRP?

Here, the code differentiates between financial creditors and operational creditors. Financial creditors are those whose relationship with the entity is a pure financial contract, such as a loan or a debt security. Operational creditors are those whose liability from the entity comes from a transaction on operations. Thus, the wholesale vendor of spare parts whose spark plugs are

kept in inventory by the car mechanic and who gets paid only after the spark plugs are sold is an operational creditor. Similarly, the lessor that the entity rents out space from is an operational creditor to whom the entity owes monthly rent on a three-year lease. The Code also provides for cases where a creditor has both a solely financial transaction as well as an operational transaction with the entity. In such a case, the creditor can be considered a financial creditor to the extent of the financial debt and an operational creditor to the extent of the operational debt”

(Emphasis Supplied)

18. *The Learned Counsel contended that ‘Lease Rentals’ are not a ‘Service’ and do not fall within Regulation 32 (Insolvency Resolution Process for Corporate persons, Regulation 2016) read -12- Company Appeal (AT) (Insolvency) No. 229 of 2020 with Section 14 (2) which defines essential goods or services as follows;*

(1) Electricity

(2) Water

(3) Telecommunication Services

(4) Information Technology Services To the extent, these are not direct input to the output produced or supplied by the Corporate Debtor. The contention of the Learned Counsel for the Appellant that Regulation 32 read with Section 14 (2) is applicable to the facts of this case and that cold storage facilities cannot be construed as ‘essential service’ and, therefore, does not fall within the meaning of ‘Operational Debt’ as defined under Section 5 (21), is untenable, having regard to the fact that Regulation 32 read with Section 14 (2) only mentions essential goods and services whose supply cannot be terminated during the course of CIRP. The Code does not anywhere specify that the goods so mentioned under Regulation 32 are

*the same as those which fall within the ambit of the definition of Section 5 (21). Annexure 1D of the Leave and Licence Agreement stipulates that the cold storage with the machinery and equipment has been designed for storage of all agricultural commodities. The Lessee being in need of a cold storage participated in the tender floated by the Lessor and sought for grant for the use and occupation of the cold storage unit. **It is apparent from the material on record and the terms and conditions of the Leave and Licence Agreement that the Appellants have leased out the premises for 'Commercial Purpose', which comes within the meaning of 'Service' for the purpose of sub-Section (21) of Section 5 of the I&B Code, 2016.***

20. At this juncture, we find it relevant to refer to the definition of 'Service' as defined under Section 2 (42) of the Consumer Protection Act 2019;

"(42) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;"

21. The provisions of the Central Goods and Services Tax Act 2017. Schedule – II of the Act lists down the activities that are to be treated as supply of goods or services, and paragraph 2 of the Schedule stipulates as follows;

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services."

As the premises in the case on hand is leased out for 'Commercial Purpose', the cold storage owner/NAFED on collection is required to pay 'service tax' which is reflected in the tax invoices and 'Ledger Accounts' which is part of the record filed.

22. *Therefore, keeping in view, the observations made by the Hon'ble Supreme Court in Para 5.2.1 of Mobilox (Supra), and having regard to the facts of the instant case this Tribunal is of the earnest opinion that the subject lease rentals arising out of use and occupation of a cold storage unit which is for Commercial Purpose is an 'Operational Debt' as envisaged under Section 5 (21) of the Code. Further, in so far as the facts and attendant circumstances of the instant case on hand is concerned, the dues claimed by the First Respondent in the subject matter and issue, squarely falls within the ambit of the definition of 'Operational Debt' as defined under Section 5 (21) of the Code.*

c) II Sanjeev Kumar Vs. Aithent Technologies (p) Company Appeal (AT) (Insolvency) No. 474 of 2020

[Vide order dated 05.11.2020 after considering Ravindranath Reddy V/s G. Kishan (Company Appeal (AT) (Ins) No. 331 of 2019], Anoop Sushil Dubey Vs National Agriculture Co-operative Marketing Federation of India Ltd- Company Appeal (AT) (Insolvency) No. 229 of 2020 and other judgements]

The Bench comprising of three members of the Hon'ble National Company Law Appellate Tribunal ("the Appellate Tribunal") held by a majority that license Fee/Rent is in the nature of Operational Debt and an Application for initiation of CIRP can be instituted against non-payment of the said license fee treating the same as Operational Debt U/s 5(21) of the Code [Ref. para 9 & 20 of the said Judgement]. This Judgement is the latest 3-member Bench Judgment of the Hon'ble

Appellate Tribunal after considering various Judgements of the said Tribunal and it is therefore prayed that the same be applied in the present application.

- d) In View of the above, it is quite clear that the Hon'ble NCLAT in its latest Judgment on the basis issue in the case of *Sanjeev Kumar Vs. Aithent Technologies (P) Ltd. Company Appeal (AT) (Insolvency) No.474 of 2020 Vide order dated 05.11.2022* comprising of Hon'ble three Members has held that license Fee/rent is an Operational Debt as per section 5(21) of the Code. The said judgment is the latest judgment comprising of three members on the said issue and is therefore binding. Further even in the dissenting opinion, the Hon'ble Member dissenting from the said majority view has not expressed any dissent on the aspect of considering license fee/rent as operational debt. The dissenting view is primarily expressed on the pre-existence of dispute. Hence, so far as the ruling on treating license fee/rent as Operational Debt U/s 5(21) is concerned, the same is undisputed.

8. The Corporate Debtor has filed its Written Submissions and submits as under:

- a) On 18.06.2019, the suit premises came to be vacated by the Corporate Debtor and requested to the Operational Creditor to take peaceful possession and various representatives made personal visits to the house of Mr. Bharat Doshi but he never acknowledged and accepted the possession. Since no other options were left, Corporate Debtor Company's Director sent a registered post letter dated 29.06.2019 saying that kindly take a peaceful and vacant possession.

- b) The Operational Creditor issued notice dated 09.10.2019 in the format of section 3 & 4 of the Code to which the Corporate Debtor categorically denied and disputed vide its reply dated 16.10.2019.
- c) The L.D. Suit is pending before the Small Cause Court and amendment in plea has been filed by the Corporate Debtor before the same court under Order 6 Rule 17 of Civil Procedure Code. The said application is still pending and it is yet to be argued.
- d) The Corporate Debtor submits that relying upon the provisions of the Code by a specific order has been passed by Hon'ble NCLT, Guwahati Bench, Guwahati, in the matter of *CP(IB) No.15(GB) (2019), M/s. Aurora Accessories Pvt. Ltd. Vs. M/s. Ace Acoustics & Audio Video Solutions Pvt. Ltd.*, stating that rent disputes are not covered under the Code. This Tribunal held that if any debt arising out of non-payment of lease rent, it does not fall under the definition of Operational Debt as defined under section 5 (21) of the Code. In the similar matter and issues, Hon'ble NCLAT in *Company Appeal (AT) (INS) No. 1066 of 2019, Aurora Accessories Pvt. Ltd. Vs. Ace Acoustics & Audio Video Solutions Pvt. Ltd.*, have confirmed that New Delhi Bench order dated 28.01.2020, which matter specifically dealt with the issue, the Court did not find any substance in that Appeal filed by the Opposite Party.
- e) The similar application was filed in Application No. CP (IB) No. 183 of 2021, which was dismissed by this Tribunal. The issue with respect to rent debt, whether it falls under the ambit of Operational Creditor are pending before Hon'ble Supreme Court of India vide *Civil Appeal No. (S) 4237 of 2020, Promila Taneja Vs. Surendri Design Pvt. Ltd.*

Findings/Observations:

9. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.
10. The Operational Creditor had given the premises on lease to the Corporate Debtor vide Leave and License Agreement dated 20.06.2014 for period of 55 months starting from 01.07.2014 to 30.12.2018. The lease was terminated by the Operational Creditor vide its E-mail dated 19.09.2018. The Operational Creditor raised Invoices dated 16.11.2018 and dated 08.01.2019.
11. The Corporate Debtor contended that there is no Operational Debt as the dues are arising out of non-payment of lease rent. The Corporate Debtor has relied upon Judgment of Hon'ble NCLAT in *Company Appeal (AT) (INS) No. 1066 of 2019, Aurora Accessories Pvt. Ltd. Vs. Ace Acoustics & Audio Video Solutions Pvt. Ltd.* wherein the Hon'ble NCLAT held that if any debt arising out of non-payment of lease rent, it does not fall under the definition of Operational Debt as defined under section 5 (21) of the Code.
12. To find out whether the non-payment of rent arising out of Leave and License Agreement can constitute an Operational Debt under section 5 (21) of the Code, it needs to read the provisions of the said section. Section 5 (21) is read 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”

13. In *M. Ravindranath Reddy V. G. Kishan*, 2020 SCC OnLine NCLAT 84, the Hon'ble NCLAT, the issue was whether a landlord by providing lease could

be treated as Operational Creditor. It was held by full Bench that it does not fall within the ambit of the definition of “Operational Debt”. This Judgment has been followed subsequently in *Aurora Accessories (P) Ltd. V. Ace Acoustics & Audio Video Solutions (P) Ltd.*, 2020 SCC OnLine NCLAT 527 and in *Promilla Taneja V. Surendri Design (P) Ltd.*, 2020 SCC OnLine NCLAT 1105.

14. The case of Promilla Taneja is pending in the Hon’ble Supreme Court for deciding the same issue. In view of the above, this Bench is of considered view that the debt arising out of Rent & Lease cannot be considered as Operational Debt under the Code.
15. The Operational Creditor stated that the Operational Creditor raised invoice for the use of additional car parking space even after the termination of the Leave and License Agreement. This Bench is of view that the provision for use of additional space by the Corporate Debtor was not incorporated in the Leave and License Agreement and hence the Operational Creditor cannot raise invoice against the Corporate Debtor for the use of additional space without the consent of the Corporate Debtor.
16. Further, it was observed by this Bench that the L.D. Suit is pending before the Small Cause Court with respect to the same claim. The Corporate Debtor has filed Suit for Permanent Injunction and raised issues with respect to claim prior to issue of Demand Notice by the Operational Creditor. The Corporate Debtor has replied to the said Demand Notice denying and disputing the claims of the Operational Creditor. Hence, this Bench is of the view that the claim of the Operational Creditor cannot be admitted being there is pre-existing dispute between the Corporate Debtor and the Operational Creditor.

17. For the above-mentioned observations, the Company Petition being CP (IB) No.174/NCLT/MB-IV/2021 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Bharat Doshi, (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Autobahn Automotive Private Limited (“the Corporate Debtor”) is hereby **Dismissed** with no cost.
18. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the Operational Creditor/Applicant before any other Judicial Forum shall not be prejudiced on grounds of dismissal of the present Petition

Sd/-

Kishore Vemulapalli
Member (Judicial)

16.06.2022

Sd/-

Rajesh Sharma
Member (Technical)