

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH – V**

**Company Petition (IB) No. 139/ND/2022**

*Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

**IN THE MATTER OF:**

MISTY MEADOWS PRIVATE LIMITED

Having its registered office at:

Shop no. 4/36, DDA Market

Dakshin Puri Extension

New Delhi, DL 110062 India

Email: [mistymeadowspvt@gmail.com](mailto:mistymeadowspvt@gmail.com)

Through its authorized representative

... ***Operational Creditor***

**VERSUS**

AADI BUILDWELL PRIVATE LIMITED

Having its registered office at:

894-A, 893-A, Maruti Plaza Complex

Shop no. FS-II, & FS-12, UGF W.No.8,

Mehrauli, New Delhi, South West Delhi

DL 110030 India.

Email: [aadibuildwell@gmail.com](mailto:aadibuildwell@gmail.com)

Through its authorized representative

... ***Corporate Debtor***

**ORDER DELIVERED ON: 06.06.2022**

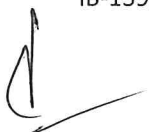
**CORAM:**

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. Hemant Kumar Sarangi, Hon'ble Member (Technical)

**PRESENT:**

**For the Operational Creditor:** Adv. Eshna Kumar, Adv. Nishant Nigam & Adv. Aditya Maheshwari



**ORDER**

**AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

We have heard the Ld. Counsel for the Applicant and perused the averments made in the application. The matter was heard on 24<sup>th</sup> February, 2022 on the point of issuance of the notice. The point for consideration is that the Applicant on the basis of Arbitration Award an application u/s 9 of the IBC is maintainable or not?

2. The Ld. Counsel for the Applicant submits that Arbitration Award comes under the definition of Operational debt. He relied upon the decision of Hon'ble Supreme Court reported in (2018)17 SCC 662 and order passed by the Mumbai Bench in CP-IB-798/2019 and by placing reliance the Ld. Counsel for the Petitioner submits that since that the Arbitration Award is an Operational Debt, therefore, Section 9 of IBC, 2016 application is maintainable.

3. In terms of the submissions made on behalf of the Petitioner, we have perused the averments made in the application as well as the decisions upon which the Petitioner has placed reliance.

4. Before considering the submission, we would like to refer to the definition of Operational Debt as defined under Section 5(21) of the IBC, 2016. "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the <sup>5</sup>[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;



5. On perusal of the definition referred to supra, it is seen that the Operational debt is a claim in respect of the provision of goods and services including employment for a date in respect of the payment of dues arising under any law for the time being and payable to the Central Government, any State Government or any Local Authority.

6. At this juncture, we would like to refer to the decision of the Hon'ble Supreme Court reported in **(2018)17 SCC 662**. The relevant portion is reproducing below:

*30. With regard to the submission of the learned counsel for the Respondent, that the amount of Rs. 1.71 crores stood admitted by Mr. Banerji's Client as was recorded in the arbitral award, suffice it to say that cross-claims of sums much above this amount has been turned down by the Arbitral Tribunal, which are pending in a Section 34 petition challenging the said award. The very fact that there is a possibility that Mr. Banerji's client may succeed on these cross-claims is sufficient to state that the operational debt, in the present case, cannot be said to be an undisputed debt.*

*32. we are also of the view that the Appellate Tribunal, when it relied upon Form V Part 5 of the 2016 Rules to state that the Operational debt would, therefore, be said to have been proved, missed the vital sub-clause (111) in para 34 of Mabilox Innovations. Even if it be clear that there be a record of an operational debt, it is important that the said debt be not disputed. If disputed within the parameters laid down in Mobilox Innovation, an insolvency petition cannot be proceeded with further.*

*33. For all these reasons, we are of the view that the judgment of the Appellate Tribunal needs to be set aside and is therefore reversed. The appeals are accordingly allowed in the aforesaid terms. Consequently, the bank guarantees that have been furnished, pursuant to our order dated 15.12.2017 stands discharged.*

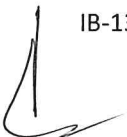
7. Now in terms of the decision, we consider the prayer of the applicant. On perusal of part IV of the application, we notice that the Applicant has claimed the amount of Rs. 1 crore on the basis of Arbitration Award passed on 19<sup>th</sup> December, 2020. We further notice that the Applicant though placed

reliance upon the Arbitration Award, nowhere mentioned in the application whether any application under Section 34 of the Arbitration and Conciliation Act is pending for consideration against that award or not.

8. On perusal of the averments made in the Arbitration Award, we notice that the Corporate Debtor has challenged the amount claim by the Applicant before the Arbitral Tribunal. We further notice that by filing this application, the Applicant has claimed one crore, which is given to the Applicant towards the Notional Damages suffered on account of gross breach of *the TDR Agreement* committed by the Respondent.

9. At this juncture, we would like to refer to the relevant portion of the Award and the scanned copy of which is reproduced below:

1. *The claimant/Company is entitled to forfeit and thus retain the amount of Rs. 10 Crores which had been deposited in the year 2011 by each of the Five Respondents in the sum of Rs. 2 Crores each towards security/adjustment of future revenue sharing in case the Project had been completed and for holding the land of 78 acres for at least five years from 2011 to 2016 without any development or yielding any profit or even releasing the land without construction the Claimant by invoking cancellation of TDR Agreement.*
2. *For the aforesaid reasons, each of the Five Respondents/Companies shall further pay a sum of Rs. 1 Crore each to the Claimant/Company (collectively Rs. 5 Crore) by way of each company's share payable towards the notional damage suffered by the Claimant on account of gross breach of the TDR Agreement committed by the Respondents by*



*not taking or initiating a single step for executing any development much less construction on the Project Land of 78 acres for an unusually and unreasonably long and huge delay of at least 5 years which was caused by the Respondents/Companies collectively without any reasonable justification.*

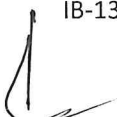
*3. Both the contesting parties shall bear the cost of these arbitrations in equal measure.*

*4. Accordingly, this Award stands corrected/rectified vide this order dated 19.12.2020 in pursuance to the application filed by the Claimant for correction in the Award.*

10. On perusal of the relevant portion of Arbitration Award, we observe that the present application is filed by the applicant in respect of that part of the Award which was granted to the Applicant, as damages suffered on account of gross breach of *the TDR Agreement* committed by the Respondent. It is not the case of the Applicant that this amount was awarded in lieu of the supply made by the Applicant to the Corporate Debtor rather the Award shows it is given as the compensation for the damages.

11. At this juncture, we would also like to mention this fact that nowhere in the application, the Applicant has mentioned that whether any application under Section 34 of the Arbitration Act is pending or not. The award was contested by the Corporate Debtor.

12. We further notice that the Applicant has also not placed on record whether the notice was duly delivered or not even Section 9(3) (b) affidavit has not been filed by the Applicant. Therefore, in terms of the decisions of the Hon'ble Supreme Court when we consider the prayer of the applicant then we are considered view that the amount claim during Arbitration was disputed



by the respondent, and it is not the amount given in lieu of provision of goods or service rather it is the compensation for damages and it is also not placed on the record whether any appeal is preferred or not. Therefore, in our considered view that the damages Awarded in terms for the breach of the agreement do not come within the preview of the operational debt.

13. Hence the present application is not maintainable. Accordingly, the same is **dismissed**.

Sd/-

**(HEMANT KUMAR SARANGI)**  
**Member(T)**

Sd/-

06/06/2022

**(ABNI RANJAN KUMAR SINHA)**  
**Member(J)**