

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 704 of 2024

IN THE MATTER OF:

Dr. Indu Singh
Suspended Director of G.V. Meditech Pvt. Ltd. **...Appellant**

Versus

Prime Tower – A Partnership Firm & Anr. **...Respondents**

Present:

For Appellant : **Mr. Arun Kathpalia, Sr. Advocate with Ms. Sanjana Saddy, Advocate.**

For Respondents : **Mr. Shivam Kumar, Ms. Upasana Singh, Mr. Udai Chandani, Mr. Aditya Survanshi, Advocates for R-1.**

Mr. Abhishek Naik, Advocate for R-2.

ORDER
(Hybrid Mode)

12.09.2025: Heard learned counsel for the Appellant, learned counsel appearing for the Respondent No.1 as well as learned counsel for the IRP. This appeal has been filed challenging the order dated 03.04.2024 by which Section 9 application filed by the Respondent No.1 herein has been admitted.

2. The Corporate Debtor has been running a hospital for which premises was taken from Respondent No.1 on 15.08.2022 for 9 years' on rent of Rs.6,41,300/- per month. There has been a subsequent registered lease deed. There was some default in payment of rent, hence, the Respondent No.1 initiated proceeding before the Court of Additional District Magistrate City Varanasi praying for rent. The said proceedings were dismissed by order dated 12.01.2023 with liberty to file fresh eviction suit. Subsequent to the said order, a Demand Notice was issued on 13.03.2023, which Demand Notice

was not replied. Learned counsel for the Appellant submitted that there has been correspondence / issues between the parties with regard to rent. He has referred to letter dated 13.08.2022, which was issued by the Corporate Debtor. Subsequent to issuance of Demand Notice, Section 9 application was filed. In the Demand Notice Rs.6,48,61,385/- was claimed towards rent till February, 2023 with interest. Section 9 application was contested by the Corporate Debtor raising the issue of pre-existing dispute and other grounds. The Adjudicating Authority by the impugned order has admitted Section 9 application.

3. When the appeal was taken for consideration, learned counsel for the Appellant submitted that Appellant is ready to deposit the rent upto 01.08.2022. On 10.04.2024, Appellant was permitted to deposit the amount and in the meantime, the impugned order was directed to remain stayed. The interim order was extended from time to time.

4. Learned counsel for the Appellant challenging the order submits that there being pre-existing dispute between the parties, regarding the lease rental, the application under Section 9 ought not to have been admitted. He submits that letter dated 13.08.2022 issued by the Corporate Debtor reflects certain issues between the parties. It is further submitted that in view of the suit having been filed under Section 23 by the Operational Creditor on 12.01.2023, for the same amount with regard to which suit was dismissed Section 9 proceeding has been initiated. He further submits that the Adjudicating Authority although was of the view that amount claimed prima facie seems to be inflated, still admitted the Section 9 application. Learned counsel for the Appellant submits that, however, without prejudice to the

contentions raised in the appeal, the Appellant has reached out the Respondent and settled all the issues between the parties. Affidavit has been filed by the Appellant as well as the Respondent where both the parties have submitted that all issues between the parties have been settled which include the payment towards GST.

2. Learned counsel for the IRP appears and submits that IRP has incurred expenses and fee is Rs.4.5 Lakhs, which is required to be paid.

3. Learned counsel for the Respondent submits that suit under Section 23 was not dismissed on merits and letter dated 13.08.2022 relied by the Appellant cannot be treated to be pre-existing dispute.

4. We have considered the submissions of learned counsel for the parties and perused the record.

5. From the facts as brought on the record, it does appear that there were issues between the parties prior to issuance of Demand Notice regarding the entitlement of the Operational Creditor towards rent. Letter dated 13.08.2022 has been brought on the record, which reads as follows:

“Date 13-08-2022

To,

*Priyam Baranwal
Partner, Prime Tower
D 53/6-K, Tulsipur, Mehmoorganj
Varanasi-221010*

Ref. Your Letter dated 05.08.22 regarding premises

No. D 63/6-K, Mehmoorganj, Varanasi

Dear Sir/Madam

1. Please refer to your captioned letter for vacating the premises on or before 17.08.22. In this connection we would like to draw your attention towards our discussions for the renewal of earlier lease deed executed for 9 years which came to an end on 17.08.21. The discussions began in the month of August 2021 and lasted in Dec 2021 without any results due to imposition of unreasonable terms against the legal and moral norms and market conditions. In respect of rent, Interest etc. You also charged the rent during the covid lockdown period without any waiver although the hospital was closed for nearly one month and not running in normal manner during the rest of the period.

2. That in the month of December 2021 itself we promised to vacate the premises within one year time because it is impossible to shift Hospital in another building in such a short notice. We are further reiterating our promise to vacate the premises before 31st of December 2022 and handover the vacant possession of the premises to you peacefully.

3. That so far as the lease deed dated 21.01.22 is concerned, it is notable that we were not ready for the same and it was executed under the undue pressure caused by you without any need when the disputes were finally resolved that the premises shall be vacated before 31.12.22. You have forced us to execute the same on your own terms and conditions without our consent as in a dominating position due to continuance of the hospital in your premises and could not have been shifted within a few days.

4. That so far as the dues of rent is concern kindly note that when the premises was first handed over to us after the execution of first lease deed, the building was only a bare structure with slab over it and the entire construction as per the needs was made by us Including electric wiring, water line, sewerage line, walls, plastering, partition, windows, doors etc. and spent a huge sum over it in the presumption that our relationship shall last long but only due to unpractical and unreasonable approach we also came in the hot water and forced to vacate the premises leaving our entire construction and Investment worthless. We further demand to set off the Investment in the improvement of the building incurred by us and accounting is required for the same. It is further notable that we shall take all care so that no wear and tear should be caused however if any wear and tear shall happen, the same cannot be happen in original status and may happen only in Improvements made by us.

5. That in the aforesaid circumstances we may only request you to bear with us till 31.12.22 and avoid any legal proceedings. We promise you to vacate the premises on or before 31.12.22 and shall settle the accounts after the determining the cost of Improvements. We shall further request you to please, do not indulge any abusive use of process of law or unlawful measures against us.

With Regards

For G. V. Meditech Pvt. Ltd.

(Director)”

6. The order passed by the Additional District Magistrate, City, Varanasi dated 12.01.2023 dismissing the Suit under Section 23 of Uttar Pradesh Tenancy Regulation Act (Second) Ordinance 2021 is to the following effect:

“Date: 12.01.2023

Papers presented.

The parties present in person.

Heard the arguments of both sides. During the debate, it was brought to notice by the plaintiff that as per the notice sent by the plaintiff to the defendant on the termination of the occupancy period mentioned in the lease deed, the defendant in its reply notice has vacated the rented building/property after December, 2022 and the plaintiff will get the possession. It has been mentioned to get it done. It is clear from the scrutiny of the file that the suit in question has been filed by the plaintiff on September 14, 2022 and the notice and response notice sent to the defendant have not been attached with the file, which shows that the plaintiff is approaching the court on the basis of wrong facts and wish to get the disposed of the case by misleading the authority. Therefore, the suit filed by the plaintiff under Section 23 is dismissed. In case of defendant not vacating the premises in question or does not execute a fresh tenancy agreement, the plaintiff can obtain reprieve by filing a fresh eviction suit.”

7. Section 9 proceedings were initiated by the Appellant which was contested by the Corporate Debtor by filing a reply to Section 9 to which Rejoinder was also filed. Adjudicating Authority has also in the impugned order in Para 39 noticed that prima facie such an inflated rent was charged

which accrued under Section 10A period. However, it was observed that may not be reason for not entertaining the application. From the facts brought on the record, we are of the view that the issues regarding pre-existing dispute was raised which was turned down by the Adjudicating Authority. We are of the view that in the factual background of the present case, Section 9 application ought not to have been admitted.

8. Despite the contentions raised by the Appellant, Appellant has entered into settlement with the Operational Creditor to discharge his dues, which has been filed by an Affidavit by the Appellant as well as Respondent, which are taken on record.

9. Considering the aforesaid, we see no reason to keep the appeal pending. The Section 9 proceeding are closed. The Appellant has undertaken to pay Rs.4.5 Lakhs to the IRP, which may be done within two weeks by a Bank Draft. Appellant has also submitted that payment to Respondent No.1 – Operational Creditor shall be made as per the settlement between the parties. Appeal is disposed of.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Archana/nn