

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 80 of 2022

IN THE MATTER OF:

Vibrus Homes Pvt. Ltd.

...Appellant

Versus

Ashimara Housing Pvt. Ltd. & Anr.

...Respondents

**For Appellant: Mr. Tarranjit Singh Sawhney and Mr. Udit Gupta,
Advocates.**

For Respondents:

**ORDER
(Virtual Mode)**

22.04.2022: Heard learned counsel for the Appellant. This Appeal has been filed against order dated 21.12.2021 passed by the Adjudicating Authority by which the Adjudicating Authority has admitted the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by the Operational Creditor.

2. The Operational Creditor has given a sum of Rs.32,43,000/- as interest free deposit towards the advance license fee which was contemplated to be a security deposit till the end of the license period. It appears that after the payment of the interest free amount another cheque was issued by the Operational Creditor, however, direction were issued to stop payment. Subsequently, the project could not take off and an Application under Section 9 was filed by the Operational Creditor which has been admitted.

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3. Learned counsel for the Appellant contended that the said amount of Rs.32,43,000/- was only security deposit which can be returned by the Licensor only at the end of three years period. He has referred to Clause 5 of the Agreement dated 15.05.2019.

4. We have heard learned counsel for the Appellant and perused the record.

5. Clause 5 of the Agreement on which learned counsel for the Appellant has given emphasis provides:-

"5. That the licensee shall pay a sum of Rs.32,43,000 (Rupees Thirty Two Lacs and Forty Three Thousand) and interest free deposit towards advance license fee and the same will be retained as a security deposit by the licensor till the end of the license period. The security deposit shall be refunded at the end of 3 years i.e. once the entire payment of 3 years is received & under no circumstances shall be adjusted to the licensee at the end of 3 years. In case both parties wish to extend the contract then agreement can be extended with mutual consent."

6. The payment of Rs.32,43,000/- is contemplated to be payment of interest free deposit towards advance license fee although it was contemplated to be retained as security deposit till the end of the lease period. Present is a case where although Agreement took place between the parties but the project could not take off and it was abandoned. Learned counsel for the Appellant disputes the fact that the project was abandoned. He says that it is matter of

dispute. Be it as it may. It is for the Appellant to take remedies out of the Agreement and it is open for the parties to take legal proceedings as permitted in law. In view of the fact that the payment made was initially towards the advance license fee it was an operational debt, the Adjudicating Authority has rightly admitted the application under Section 9. We see no merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

**[Shreesha Merla]
Member (Technical)**

Archana/nn