

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insol.) No. 165 of 2017

IN THE MATTER OF:

M/s. James Hotels Ltd.

...Appellant

Vs.

Punjab National Bank

...Respondent

ORDER

07.09.2017- Admittedly, 'Corporate Insolvency Resolution Process' started against appellant-'Corporate Debtor' M/s. James Hotels Limited is pending before the Adjudicating Authority (National Company Law Tribunal) Chandigarh Bench, Chandigarh. During the resolution process, the 'Corporate Debtor' alleged that the 'Financial Creditor'-Punjab National Bank has committed a fraud on the basis of record filed by 'Corporate Debtor' which was seriously contested by the 'Financial Creditor'.

2. In the aforesaid background on 23rd August, 2017, the Adjudicating Authority passed the following order in Company Petition No. (IB) No. 15/Chd/CHD/2017:-

"It is argued on behalf of the Corporate Debtor that Punjab National Bank has committed a fraud on the basis of record filed by Corporate Debtor which is seriously contested by the learned counsel for the Bank Financial Creditor.

List the matter for arguments on 29.08.2017 to be kept high up in the list. In the meanwhile, Registrar of Companies, Punjab & Chandigarh be directed to preserve

the CCTV footages relating to the visitors entering the premises of ROC for one month upto 01.08.2017.

Notice of this application to ARCIL. Mr. V.K.Sachdeva, Advocate who is present in the Court accepts notice on behalf of ARCIL and seek to file the Power of Attorney with the necessary authorisation.”

3. Ld. Counsel appearing on behalf of the appellant-‘Corporate Debtor’ submits that the “offences and penalties” under I & B Code can be looked into only by Special Judge in terms of Chapter VIII of Part II of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’). However, we find that ‘the fraudulent or malicious initiation of the proceedings’ and ‘fraudulent bank trading’ etc. can be looked into by Tribunal under Sections 65 and 66 of the I&B Code. In any case, during the course of Insolvency Resolution Process, if allegation of fraud by one or other party is brought to the notice of the Adjudicating Authority it is always open to the Adjudicating Authority to notice the appropriate authorities and parties to find out whether a prima facie case is made out and the same has any effect in the resolution process or not.

4. It is informed that the matter was again taken by the Adjudicating Authority on 23rd August, 2017 and when on the said date further observations and direction have been made. The said order is not under challenge.

5. In the aforesaid circumstances, as the Adjudicating Authority to find out the truth of the allegation has issued notice, we are not inclined to interfere with the order at this stage.

6. However, if any adverse order is passed or any order is passed under section 31 of the I&B Code in view of enquiry being made, it is open to the aggrieved person to move before the Adjudicating Authority or the Appellate Tribunal. The appeal is dismissed with aforesaid observations. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Balvinder Singh)
Member(Technical)

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