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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1360/2020 & CM APPL. 4744/2020

M/S NIMITAYA HOTEL AND RESORTS LIMITED AND ANR. ..... Petitioners

Through: Mr. Nakul Mohta with Mr. Johnson Subba and Mr. Manoranjan Nayak, Advocates.

versus

ALLAHABAD BANK ..... Respondent

Through: Ms. Reema Khorana with Ms. Akriti Gautam, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 12.02.2020

1. The following substantive prayers have been made in the writ petition:-

> *"a) Issue a writ or Writs and/or Order and/or Orders and/or Direction or Directions in the nature of mandamus or any other appropriate Writ, order or direction of like nature for restraining the Respondent from proceeding with the petition being Company Petition (IB) No. 1913 of 2019 filed under section 7 of Insolvency and Bankruptcy Code, 2016 before the Hon'ble National Company Law Tribunal, New Delhi;*
>
> *b) Issue a writ or Writs and/or Order and/or Orders and/or Direction or Directions in the nature of*

certiorari or any other appropriate ; Writ, order or direction of like nature for quashing the proceedings in Company Petition (IB) No.1913 of 2019 filed by the Respondent against the Petitioner No,1 before the Hon'ble National Company Law Tribunal, New Delhi;

c) Direction to Respondent to make Board Approved policies made in pursuance of the RBI Directions dated 7.6.2019 available in public domain;"

2. On the previous date i.e. 05.02.2020 , the following order was passed:-

*"**CM APPL. 4745/2020***

1. This is an application seeking permission to place on record the synoptic note concerning the case which is beyond the prescribed number of pages.

2. The prayer made is allowed.

3. The application is disposed of accordingly.

CM APPL. 4746/2020

4. This is an application seeking permission to file legible copies of dim annexures.

5. Allowed, subject to petitioners filing legible copies of dim annexures before the next date of hearing.

6. The application is disposed of.

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7. Learned counsel for the petitioners says that the amount that the petitioners are wanting to pay will be placed in an interest bearing account to enable the bank to consider its proposal for settlement.

8. I may indicate that the respondent bank has already initiated a proceeding before the concerned NCLT under the IBC Code, 2016.

9. As a matter of fact, Ms. Khorana, who appears on behalf of respondent bank says this is a second petition filed with the NCLT.

10. To be noted, the petitioners claim various reliefs in the petition based on the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Circular dated 7.6.2019 ("circular").

> *11. I may only indicate that clause 9 of the very same circular permits the lenders to initiate proceedings for insolvency or in the alternative recovery.*
>
> *12. To be noted, it has been pointed by the counsel for the respondent bank that the aforementioned circular will not be applicable as the reference date qua the aggregate exposure of the petitioner no.1 vis-à-vis the respondent bank has not been announced by the RBI.*
>
> *12.1 For this purpose, reliance is placed on Clause 12 of the said circular.*
>
> *13. It is not in dispute that the exposure of respondent bank qua petitioner no.1 is less than Rs.1,500 crore. The reference date for exposure below Rs.1,500 crore it appears has not been announced by RBI.*
>
> *14. At request of counsel for the petitioner, renotify the matter on 12.2.2020.*
>
> *15. It is made clear, though, that nothing stated hereinabove will impede the insolvency proceedings pending before the NCLT."*

3. Having regard to what was indicated by me on 05.02.2020 and the submissions of the counsel today, according to me, prayers "a" & "b" are not viable.

4. I am informed by counsel for the petitioner that NCLT has heard the arguments in the Company Petition (IB) No. 1913 of 2019 on 10.02.2020 and has reserved the same for orders/clarification.

5. Insofar as the third prayer is concerned, as noticed on the previous date, it is the stand of the respondent bank given the outstanding amount payable by the petitioners, the Reserve Bank of

India (Prudential Framework for Resolution of Stressed Assets) Circular dated 7.6.2019 ("circular") is not triggered as the reference date is not fixed.

6. Ms. Reema Khorana, who, appears on behalf of the respondent bank says that in any event the respondent bank has no difficulty in furnishing the Board Approved Policies qua loan exposure of Rs.2000 crores and above, if available, the same will be furnished to the petitioners for whatever they are worth even though the same would not be applicable.

7. Further, Ms. Reema Khorana says that the OTS proposal filed by the petitioners will be considered and the communication in that behalf will be sent to the petitioners within the next three weeks.

8. Thus, to my mind, no further directions are required.

9. Insofar as, the writ petition is concerned, the writ petition is accordingly closed.

10. Resultantly, the pending application shall stand closed.

RAJIV SHAKDHER, J

FEBRUARY 12, 2020

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