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

Date of Decision: 22nd February, 2023

\+ **W.P.(C) 2281/2023 and CM APPL. 8627/2023, 8628/2023**

PELICAN GRAND MOTELS PRIVATE LIMITED ..... Petitioner

Through: Mr. Ramesh Kumar, Adv. (M: 9540999465)

versus

PUNJAB NATIONAL BANK ..... Respondent

Through: Mr S K Sharma, Advocate. (M: 9871588055)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

<u>CM APPL.8627/2023 (for exemption)</u>

2. Allowed, subject to all just exceptions. Application is disposed of.

<u>W.P.(C) 2281/2023 & CM APPL.8628/2023</u>

3. The present Petition has been filed by the Petitioner challenging the impugned order of the National Company Law Tribunal *(hereinafter 'NCLT')* dated 6th January, 2023. In view of the fact that the reply of the Petitioner to the Section 7 Petitioner under the IBC, filed by the Respondent, was under objection, the NCLT closed the right to file the reply. On the same day the arguments have been heard and the order has been reserved.

4. Ld. counsel for the Petitioner submits that there was a delay in filing the reply, however, the same is not deliberate as it was only under objections and an opportunity may be given to the Petitioner to plead its case before the NCLT.

5. On behalf of the Bank, it is submitted that the Order dated 6th January, 2023 is an appealable order before the National Company Law Appellate Tribunal (*'NCLAT'*).

6. This Court notices that in this petition, Punjab National Bank (*'PNB'*) had filed a Section 7 petition under the Insolvency and Bankruptcy Code, 2016 (hereinafter *'IBC'*) against the Petitioner - Pelican Grand Motels Private Limited. Notice was issued for the first time on 17th October, 2022 and the Petitioner was called upon to file a reply. The first Order of the NCLT dated 17th October, 2022 reads as under:

> *"This is a petition filed under Section 7 of the Insolvency & Bankruptcy Code 2016. It is stated by the petitioner that notice in terms of Rule 4 of Adjudicating Authority, IBC Rules, 2016 has already been issued on the Corporate Debtor.*
>
> *In view of the Judgment passed by the Hon'ble Supreme Court in the case of* ***Swiss Ribbons Pvt. Ltd. & Anr. Vs Union of India & Ors.****, reported in (2019) 4 SCC 17, the Paragraph 58 reads as follows:*
>
> *" ... A conjoint reading of all these Rules makes it clear that at the stage of the Adjudicating Authority's satisfaction under Section 7(5) of the Code, the corporate debtor is served with a copy of the application filed with the Adjudicating Authority and has the opportunity to file a reply before the said authority and be heard by the said authority before an order is made admitting the said application."*
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> *And in the matter of* ***M/s Surendra Trading Company Vs. M/s Juggilala Kamlapat Jute mills Company and Ors****. Reported in 2017 SCC online SC 143, the Paragraph 24 reads as follows:*
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> > *"Further, we are of the view that the judgments cited by the NCLAT and the*

> *principle contained therein applied while deciding that period of fourteen days within which the adjudicating authority has to pass the order is not mandatory but directory in nature would equally apply while interpreting proviso to sub-section (5) of Section 7, Section 9 or sub-section (4) of Section 10 as well. After all, the applicant does not gain anything by not removing the objections inasmuch as till the objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible. "*

And in the Judgment passed by the Hon'ble NCLA in the matter of ***Innovative Industries Vs ICICI Bank reported in 2018 1 SCC 407,*** *the Paragraph 64 reads as follows:*

> *"The different decisions of the Hon'ble Supreme Court, as referred to above and exception of principles of natural justice as noticed and summarised in the preceding paragraphs is not applicable to the insolvency resolution process as it is not a case of emergency declared or prejudicial to public interest or that there is a statutory exclusion of rules of natural justice or it is impracticable to hold hearing. It is not the case that no right of any person has been affected, as immediately on appointment of an Interim Resolution Professional, the Board of directors stand superseded. There are other persons who are also affected due to order of moratorium. Therefore, the 'adjudicating authority' is duty bound to give a notice to the corporate debtor before admission of a petition under Section 7 or Section 9. "*

Accordingly, notice to the Respondent/Corporate Debtor, be issued, returnable by seven days.

This Notice to be sent by the Petitioner /Financial Creditor under NCLT Rules, Form-5.

1. By way of an email to the registered email of the Corporate Debtor available with the petitioner.

2. By way of an email to the CD email address registered with the MCA.

3. Service by way of Dasti within three days for today.

4. Proof of Service in anyone of the above form filed by way of an affidavit before the next date of hearing.

List the matter for further consideration on 02.11.2022."

7. On 2nd November, 2022, the time was given to the Petitioner to file a reply. The said order reads as under:

> *"Ld. Counsel for the petitioner seeks time to file the hard copy of the pleadings. Ld. Counsel for the CD seeks time to file the reply.*
>
> *List the matter again on 30. 11.2022."*

8. It is to be noted that in this order, no specific time has been given to file the reply and the matter has been adjourned to 30th November, 2022. Reply is stated to have been filed by the Petitioner on 29th November, 2022 i.e. before the next date of hearing. On 30th November, 2022, due to paucity of time, the matter is adjourned to 21st December, 2022. The said order is extracted below:

> *"Due to paucity of time, we are inclined to adjourn the*
> *matter for physical hearing on 21.12.2022.*
> *In the meanwhile, pleadings be completed and the hard copies be filed by the next date of hearing."*

9. On 21st December, 2022, again time is granted to file the rejoinder.

> "*Ld. Counsel for the Petitioner is present through video conferencing. The matter was passed over in the morning due to the absence of the counsel for the Punjab National Bank. It was observed by this Bench that one Adv. Dyuti Ghai, Proxy Counsel has been appearing on behalf of the main counsel in the hearings on 02.11.2022 & 30.11.2022. Based on our insistence, Mr. S.K. Sharma, Counsel for the Punjab National Bank appears before us and states that they have received the reply from the corporate debtor on 29.11.2022 and he seeks time to file the rejoinder. One week's time is granted to file the Rejoinder. List the matter on 03.01.2023 for physical hearing.* "

10. On 3rd January, 2023, the list of dates and events along with a brief compilation of relevant documents is sought.

11. It is submitted by ld. Counsel for the Petitioner that the reply filed on 29th November, 2022 was still under objection on the date when the impugned order was passed on 6th January, 2023 and the Petitioner was never communicated any defects in the reply.

12. Ld. counsel for the Respondent submits that it was the duty of the Petitioner to ensure that the reply comes on record.

13. The order under challenge dated 6th January 2023 reads:

> "*Today, when the matter was heard, Mr. S.K. Sharma, Ld. Counsel for the petitioner and Mr. Abhishek Gusain, Ld. Counsel for the respondent appeared. Notice was issued to the respondent on 17.10.2022. After service, it appears that the respondent has filed reply and served it on the petitioner's counsel but the copy of the same has not been filed before the NCLT and when the query was raised to the counsel as to whether there is a date on which the reply was filed to*

the section 7 petition, he is unable to give a date or proof of the same to NCLT.

Ld. Counsel for the respondent informed us that the reply has been filed vide diary No. 0710102074302022 on 29.11.2022. We find from the DMS that it is still continues under scrutiny and the respondent has not chosen to rectify the defects so as to bring it on record. This shows the callous attitude on the part of the CD, as he in not defending the case hence we have no other option except to close the right of filing reply.

Arguments heard. Order reserved."

As noted in the Order dated 6th January, 2023 passed by the NCLT clearly the reply had been filed by the Petitioner and it continued to remain under scrutiny in terms of the Data Management System (DMS), which is maintained by the NCLT itself. Thus, it is not clear as to why the reply was not on record. Be that as it may, a perusal of the order sheets as extracted above does not give any impression to the Court that the Petitioner in any manner was delaying deliberately or otherwise. On the first date when the time for reply was granted to the Petitioner, the Petitioner had filed the reply before the next date of hearing i.e. on 30th November, 2022.

14. Consequences of any order passed under section 7 of the IBC can be quite far reaching for any company. Accordingly, in the opinion of this Court, the Petitioner deserves an opportunity to defend its position. In the overall facts and circumstances of these case, it is directed as under:

i. The Petitioner's reply, which has been filed on 29th November, 2022, shall be placed on record before the NCLT which shall take up the matter for hearing on 15th March, 2023.

ii. The Petitioner shall be given opportunity to make its submissions in respect of the petition under Section 7 of the IBC. Thereafter, the NCLT may proceed to pass orders in accordance with law.

iii. The present order shall be communicated by the Registrar General to the Registrar, NCLT in order to ensure that the Petitioner's interests are not adversely affected, due to any delay in communication.

15. With these observations, this petition, along with pending applications, is disposed of. *Dasti*.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 22, 2023*dk/rp*