

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 16929 OF 2017

(Arising out of S.L.P. (C) No. 18195/2017)

ALCHEMIST ASSET RECONSTRUCTION COMPANY LTD.

Petitioner(s)

VERSUS

M/S. HOTEL GAUDAVAN PVT. LTD. & ORS.

Respondent(s)

ORDER

1) Leave granted.

2) Heard the learned Senior Counsel/Counsel appearing for the parties.

3) The facts of the present case disclose a very sorry state of affairs. Several proceedings had been taken and ultimately a petition filed under the Insolvency and Bankruptcy Code, 2016 was admitted on 31.03.2017 by the National Company Law Tribunal, Principal Bench, New Delhi. As a result, the moratorium that is imposed by Section 14 came into effect on that date and Respondent No.3 has been appointed as the Interim Resolution Professional (IRP). A Writ Petition was filed against this order, which was admitted only to the extent of the challenge to the vires of the Insolvency Code, is pending. A Special Leave Petition against this order was dismissed on 26.04.2017. Meanwhile, despite the moratorium, a letter was issued by Respondent No.1 to Respondent

Signature Not Verified

Digitally signed by

Shri

R.NATARAJAN

Date: 2017.10.26

16:51:54 IST

Reason:

No.2 invoking the arbitration clause between the parties and

Shri

R.NATARAJAN

Date: 2017.10.26

16:51:54 IST

Reason:

Pankaj Garg, an Advocate, was appointed as Sole Arbitrator.

Sh

ri

Garg entered upon the reference. In an other order dated

2

31.05.2017, the National Company Law Tribunal, Principal Bench, New Delhi referred to Section 14 (1) (a) of the Insolvency Code and stated that given the moratorium that is imposed, no arbitration proceedings could go on. A notice was issued on 29.06.2017 by the National Company Law Tribunal, Principal Bench, New Delhi in C.A. No. 186(PB) of 2017.

4) A First Appeal was filed before the District Judge, Jaisalmer, Rajasthan under Section 37 of the Arbitration and Conciliation Act, 1996 and by the impugned order dated 06.07.2017, the appeal was asked to be registered and notice was issued awaiting a reply.

5) The mandate of the new Insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against Corporate Debtors.

6) This being the case, we are surprised that an arbitration proceeding has been purported to be started after the imposition of the said moratorium and appeals under Section 37 of the Arbitration Act are being entertained. Therefore, we set aside the order of the District Judge dated 06.07.2017 and further state that the effect of Section 14(1)(a) is that the arbitration that has been instituted after the aforesaid moratorium is *non est* in law.

7) Mr. Jayant Bhushan, learned Senior Counsel, also informs us that criminal proceeding being F.I.R. No. 0605 dated 06.08.2017 has been taken in a desperate attempt to see that the IRP does not continue with the proceedings under the Insolvency Code which are strictly time bound. We quash this proceeding.

8) As a result, the appeal is allowed and the steps that have to be taken under the Insolvency Code will continue unimpeded by any order of any other Court.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(SANJAY KISHAN KAUL)

New Delhi;
October 23, 2017.

ITEM NO.52

COURT NO.12

SECTION XV

SUPREME

COURT OF INDIA

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 18195/2017

ALCHEMIST ASSET RECONSTRUCTION COMPANY LTD.

Petitioner(s)

VERSUS

M/S. HOTEL GAUDAVAN PVT. LTD. & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.57914/2017-EXEMPTION FROM FILING
O.T. and IA No.57976/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS)

Date : 23-10-2017 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Sidhartha Luthra, Sr. Adv.
Mr. Abhirup Das Gupta, Adv.
Ms. Swati Sharma, Adv.
Manmayi Sharma, Adv.

Mr. Rahul Pratap, AOR

For Respondent(s) Mr. Jayant Bhushan, Sr. Adv.
Ashu Kansal, Adv.

Anushree Prashit Kapadia, AOR

Suvidutt M.S., AOR

UPON hearing the counsel the Court made the following
ORDER

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)

(SAROJ KUMARI GAUR)

COURT MASTER (Signed order is placed on the file)

COURT MASTER