

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION**

Company Appeal (AT) (Insolvency) No. 162 of 2017

(Arising out of Order dated 29th July, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in Company Petition Nos. 593 & 1085/I&BP/NCLT/MAH/2017)

IN THE MATTER OF :

Sobha Limited **... Appellant**

Versus

Pancard Clubs Ltd. **... Respondent**

Present: For Appellant: Mr. Basav Prabhu S. Patel, Senior Advocate with Mr. Shailesh Madiyal and Mr. Mrigank Prabhakar, Shri Geet and Ms. Shivani Srivastava, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by Appellant- Sobha Limited ('Operational Creditor') against the order dated 29th July, 2017 passed by Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in Company Petition Nos. 593 & 1085/I&BP/NCLT/MAH/2017 whereby and whereunder the application preferred by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") against the Respondent- 'Corporate Debtor' namely 'Pancard Clubs Limited' has

been rejected on the ground of 'existence of a dispute' and in view of action taken by the Securities and Exchange Board of India (hereinafter referred to as "SEBI") against the 'Operational Creditor'.

2. The brief facts of the case are that the Appellant- 'Operational Creditor' entered into an agreement with the Respondent-'Corporate Debtor' on 1st November, 2012 for RCC construction of additional three floors and extension of the existing floors and allied development work at its club at Baner, Pune, known as 'Pan Card Club Ltd', for a contract price of Rs.10,81,31,099/-. Thereafter, further agreements were entered into between the parties on 18th December 2013, 18th March 2013, 30th April 2013, 19th June 2013 and 23rd September, 2013 for the projects at Baner, Pune and Durgapur, West Bengal. Since construction work had been taken up, the 'Operational Creditor' raised invoices on the 'Corporate Debtor' and forwarded them time to time in regard to both the projects.

3. The Respondent-'Corporate Debtor' having failed to pay the dues of Pune project, the 'Operational Creditor' issued notice under Section 434 of the Companies Act, 1956.

4. According to Appellant, the Respondent-'Corporate Debtor' had admitted the debt of Rs. 1,26,91,809/- and Rs. 73,24,160/- aggregating to Rs. 2,00,15,969/- as regards work at Baner, by endorsing the ledger

extracts and furnishing the same to the 'Operational Creditor'. After notice under Section 434 of the Companies Act, 1956, the 'Corporate Debtor' also admitted the due amount Rs. 2,84,48,027/-, as regards to work at Durgapur, West Bengal, but no payment was made.

5. From the record we find that the 'Operational Creditor' initially issued notice dated 25th January, 2017 under sub-section (1) of Section 8 of the 'I&B Code' on the 'Corporate Debtor' demanding payment of Rs. 6,25,42,007.04/- as due on 19th January, 2017. It followed by an application under Section 9. However, as the Appellant-'Operational Creditor' failed to enclose a financial certificate, the 'Operational Creditor' withdrew the application filed under Section 9 of the 'I&B Code' and subsequently filed another application under Section 9 of the 'I&B Code' after serving another notice under Section 8 of the 'I&B Code'.

6. On notice, the 'Corporate Debtor' appeared before the Adjudicating Authority and brought on record that an Arbitration Proceedings under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by parties before the Hon'ble High Court much prior to service of notice under sub-section (1) of Section 8 of the 'I&B Code' and thereby, there is an 'existence of dispute'. Prayer was made to dismiss the application.

7. Taking into account the fact that there is an 'existence of a dispute' the Adjudicating Authority refused to entertain the application under Section 9 of the 'I&B Code'.

8. It is desirable to state that apart from aforesaid ground recorded in the impugned order, the Adjudicating Authority also noticed the activities of the 'Corporate Debtor'.

9. Learned Counsel appearing on behalf of the Appellant-'Operational Creditor' submitted that the 'Corporate Debtor' having failed to pay the dues for the work carried out, the Adjudicating Authority cannot reject the application referring to an order dated 29th February, 2016 passed by SEBI. It was submitted that SEBI has passed an order, inter alia, directing the 'Corporate Debtor' not to alienate, dispose or sell any of the assets of the Company except for the purpose of making refunds to its investors and the Ministry of Corporate Affairs and to initiate the process of winding up of the Respondent.

10. In spite of service of notice, 'Corporate Debtor' has not appeared nor filed any counter affidavit.

11. Having heard learned counsel for the appellant, while we agree that initiation of 'Corporate Insolvency Resolution Process' under 'I&B *Company Appeal (AT) (Insolvency) No. 162 of 2017*

Code' cannot be nullified by any order passed by SEBI nor can be a ground to reject an application under Section 9 of the 'I&B Code' but as there is an 'existence of dispute' with regard to the invoices raised by the Appellant-'Operational Creditor', we hold that the application under Section 9 of the 'I&B Code' was not maintainable.

12. We find no merit in this appeal. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member (Judicial)

(Balvinder Singh)
Member(Technical)

NEW DELHI

04,December, 2017

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