

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1068 of 2020

IN THE MATTER OF:

Vijayalakshmi Enterprises

....Appellant

Vs

Malabar Hotels Pvt. Ltd.

....Respondent

Present:

For Appellant: Mr. Aravind Pandian, Sr. Advocate with Mr. Anandh K. and Mr. Pawan Jhabakh, Advocates.

For Respondent: Mr. Sumant Batra, Advocate.

O R D E R
(Through Virtual Mode)

15.12.2020: Appellant is aggrieved of dismissal of its application filed under Section 7 of the I&B Code in terms of impugned order dated 5th May, 2020 by virtue whereof the Adjudicating Authority (National Company Law Tribunal), Division Bench-I, Chennai, taking note of the fact that the Resolution Plan has a saving clause for the Financial Creditor providing that the Financial Creditor shall be paid on the basis of the outcome of the adjudication of the legal proceedings and keeping in view that the claim of the Financial Creditor was rejected by the Resolution Professional at the first instance in its entirety and the Resolution Applicant having submitted the Resolution Plan to the Committee of Creditors, which was approved by the Adjudicating Authority, held that the amount payable to the Financial Creditor has not been crystalized. Resolution

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Plan in respect of the Corporate Debtor-‘Malabar Hotels Pvt. Ltd.’ came to be approved by the Adjudicating Authority in terms of order dated 17th September, 2018.

2. Mr. Sumant Batra, Advocate representing Respondent - Corporate Debtor has invited our attention to page 170 of the appeal paper book (extract of the Resolution Plan) wherein in respect of disputed creditors it is provided that the amounts claimed by Mr. Bharat Kumar Dugar and M/s Vijayalakshmi Enterprises (Appellant) shall be paid on the basis of the outcome of the adjudication of the legal proceedings. Same has been reflected in Clause (9) of the order dated 17th September, 2018 passed by the Adjudicating Authority in regard to approval of the Resolution Plan. It is therefore clear that the claim of the Appellant was to be paid on the basis of outcome of adjudication of legal proceedings.

3. Admittedly, Appellant has sought initiation of Corporate Insolvency Resolution Process against the Corporate Debtor by filing an application under Section 7 of the I&B Code which cannot be held to be a legal proceeding dealing with the adjudication of the disputed claims. From tone and tenor of Clause (9) of the order approving the resolution plan, it can be easily gathered that outcome of adjudication of legal proceedings postulates pendency of any proceedings on

the date of approval of the Resolution Plan or even a suit or arbitration proceeding taken in respect of the claim thereafter. However, there is no difficulty in holding that initiation of Corporate Insolvency Resolution Process would not tantamount to adjudication of the claim in regard to right to recover money which claimant in respect of a disputed claim, claims to be entitled to. Adjudication has to be, in respect of the claim, by a Civil Court and other adjudicatory mechanism like Arbitral Proceedings. Proceedings under Insolvency and Bankruptcy Code, 2016 are only meant to resolve the insolvency issues and not adjudge a claim. Therefore, the Appellant cannot bank on this clause, while referring to filing application under Section 7 of the I&B Code. The remedy available to him did not lie in triggering Corporate Insolvency Resolution Process by taking resort to provisions of Section 7 of the I&B Code.

4. We find no merit in this appeal. It is accordingly dismissed. However, disposal of this appeal will not preclude the Appellant from seeking remedy from the competent forum, subject to all just legal exceptions.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Justice Anant Bijay Singh]
Member (Judicial)**

am/gc