

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeals (AT) (Insolvency) Nos. 62 & 63 of 2018

IN THE MATTER OF:

Neesa Leisure Limited, Ahmedabad

...Appellant

Vs.

Asset Reconstruction Company Limited

...Respondent

**Present: For Appellant: - Mr. Mod. Sajid and Mr. Samar Vijay,
Advocates**

**For Respondents:- Mr. Bishwajit Dubey and Ms. Stuti
Bhatnagar, Advocates.**

O R D E R

20.02.2018— It appears that an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been preferred by M/s. Asset Reconstruction Company (India) Ltd. for initiation of 'Corporate Insolvency Resolution Process' against the Appellant- M/s. Neesa Leisure Ltd. ('Corporate Debtor'). In the said application, the orders have been passed by Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench on 30th January, 2018 with following observations:

*"Heard arguments of learned counsel for Petitioner on
the aspect whether this petitioner can be taken up for*

Contd/-.....

hearing in view of pendency CP (IB) 190/PB/NCLT2017 before special bench, New Delhi. In view of the decision of Hon'ble High Court of Bombay in Company Application no. 572/2017 in company petition no. 434/2015 dated 05.01.2018 and decision of Hon'ble NCLAT, New Delhi in Comp Appeal (AT) (INS) 7/2017 it appears this matter can be proceeded further on merits on all aspects including the pendency of winding up petition before Hon'ble High Courts without keeping the matter pending awaiting the decision CP(IB) 190/PB/NCLT/2017 pending before Special Bench, New Delhi. Respondent sent letter for adjournment."

2. Subsequently, the case has been adjourned by impugned order dated 6th February, 2018. Both the aforesaid orders are under challenge on the ground that winding-up proceeding is pending against Neesa Leisure Ltd. and some interim order has been passed.

3. Mr. Bishwajit Dubey, Advocate who has already appeared on behalf of Asset Reconstruction Company (India) Ltd. submits that the winding up proceeding is pending but no order of winding-up has been

issued. According to him, the question involved in the appeals stands settled by the decision of this Appellate Tribunal in **“M/s. Unigreen Global Private Limited v. Punjab National Bank & Anr.— Company Appeal (AT) (Insolvency) No. 81 of 2017”**.

4. Having heard learned counsel for the parties, we are of the view that the appeal is premature as the Adjudicating Authority has not yet taken any decision in the application under Section 7 of the ‘I&B Code’. The Appellant may pursue the matter before the Adjudicating Authority, Ahmedabad, who is required to decide the application taking into consideration the relevant records of the case. It will be open to the parties to bring to the notice of the Adjudicating Authority the ratio laid down by this Appellate Tribunal in **“M/s. Unigreen Global Private Limited (Supra)”**.

5. Both the appeals stand disposed of. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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