

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency)No. 767 of 2019**

**IN THE MATTER OF:**

**M/s. IL & FS Financial Services Ltd.**

**.....Appellant**

**Vs.**

**M/s. Parsvnath Developers Ltd.**

**.....Respondent**

**Present :**

**For Appellant:**

**Mr. K.S. Nagee, Mr. Pranav Vyas, Mr. Shashank  
Agarwal, Ms. Aayushi Singh, Advocates**

**Mr. Piyush Hans, AR of Appellant**

**O R D E R**

**29.07.2019** - This appeal has been preferred by 'IL & FS Financial Services Ltd.' (Financial Creditor) against the order dated 16<sup>th</sup> July, 2019 passed by the Adjudicating Authority ('National Company Law Tribunal') Special Principal Bench, New Delhi which reads as follows: -

*“On behalf of the Corporate Debtor,  
Parsvath Developers Limited, Mr. Vashisth,  
Learned Counsel appears and states that  
Hon’ble Supreme Court has stayed the  
proceedings before the NCLT. It has further  
been clarified that Hon’ble Appellate Tribunal  
has passed an order wherein the Financial  
Creditor is an entity which is different from the*

*...contd.*

*NCLT, that this process can proceed (Appellate Tribunal Order in Company Appeal / (Insolvency)/ 107/2019) dated 15.04.2019 even with the Order passed by Hon'ble Supreme Court. This order has been stayed on 08.05.2019 by Hon'ble Supreme Court.*

*The aforesaid order has been placed on record. In view of above, we refer the above Order in the present matter. However, liberty is granted to the parties to move an appropriate Application if decision by Hon'ble Supreme Court is delivered earlier than the date fixed.*

*List on 03.09.2019”.*

2. Learned counsel appearing on behalf of Appellant – ‘IL & FS Financial Services Ltd.’ (‘Financial Creditor’) submits that the issue involved before the Hon’ble Supreme Court relates to maintainability of application u/s 7 of the Insolvency & Bankruptcy Code, 2016 (‘I&B’ Code, for short) by the allottees. The Hon’ble Supreme Court will decide as to whether the allottees come within the meaning of ‘Financial Creditor’ as defined u/s 5(8) read with Section 5(7) of the ‘I&B Code’. However, that issue is not applicable to the ‘Financial Creditor’ like Appellant, who disbursed amount against the consideration for the time value of money and their application u/s 7

...contd.

against 'Parsvnath Developers Ltd.' ('Corporate Debtor') will not be guided by the order of stay passed by Hon'ble Supreme Court on 8<sup>th</sup> May, 2019 which relates to the allottees.

3. However, as the matter is pending before the Hon'ble Supreme Court, the Adjudicating Authority or this Appellate Tribunal cannot clarify as to whether the order of stay dated 8<sup>th</sup> May, 2019 / 11<sup>th</sup> May, 2019 or any other order of stay, staying the 'Corporate Insolvency Resolution Process' against 'Parsvnath Developers Ltd.' at the instance of the allottees will also cover all the 'Financial Creditors', 'Operational Creditors' in case of default, who were not allottees.

4. The Appellant may move before the Hon'ble Supreme Court for appropriate clarification, otherwise in view of order of stay passed by Hon'ble Supreme Court, the Adjudicating Authority cannot proceed with the matter.

The appeal stands disposed of. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

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

[Kanthi Narahari]  
Member (Technical)