

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 724 of 2019
Company Appeal (AT) (Insolvency) No. 725 of 2019

IN THE MATTER OF:

Liberty House Group Pte. Ltd.

...Appellant

Versus

State Bank of India & Anr.

...Respondents

Present:

For Appellant :

**Mr. Virender Ganda, Senior Advocate with
Mr. Arvind Kumar Gupta, Mr. Soumabho Ghose, Ms.
Henna George and Mr. Raza Abbas, Advocates**

For 1st Respondent:

**Ms. Misha and Mr. Shantanu Chaturvedi, Advocates
for 'State Bank of India'**

O R D E R

17.07.2019 In both the appeals, the questions arise for consideration are:

- i) Whether the provisions under Chapter VII Section 74(3) or Section 235A of the 'Insolvency and Bankruptcy Code, 2016' (for short, 'the **I&B Code**') will be attracted, if the Adjudicating Authority u/s 33(3) or otherwise comes to a finding that the 'Corporate Debtor' ('Successful Resolution Applicant' whose plan has been approved u/s 31) has contravened the approved 'Resolution Plan';
- ii) Whether a show cause notice required to be issued to the 'Corporate Debtor' to state as to why Adjudicating Authority will not hold that the 'Corporate Debtor' has contravened the 'Resolution Plan' wilfully

and knowingly/contravened the 'Resolution Plan' before coming to a conclusion that the 'Corporate Debtor' (Successful Resolution Applicant) has contravened the 'Resolution Plan';

- iii) Whether for giving such finding, the 'Committee of Creditors' or 'any other person' is required to be noticed for hearing, if the 'Corporate Debtor' allege that because of failure of the 'Committee of Creditors' or any other person it failed to give effect to the 'resolution plan';
- iv) Whether simultaneously the Central Government or 'Insolvency and Bankruptcy Board of India' (**IBBI**) are required to be noticed and heard, if the allegation attracts Section 74(3), for giving effect to sub-section (2) of Section 236 as in absence of any complaint by the Central Government/IBBI, no Special Court take cognizance of any offence punishable under Section 74(3) of the I&B Code; and
- v) Whether for passing any order u/s 235A, the Adjudicating Authority is competent to pass penal order in absence of any prescription of any punishment of imprisonment.

In the facts and circumstances, we allow the Appellant to implead, in both the appeals – Secretary, Ministry of Corporate Affairs, Government of India , 'A' Wing, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi – 110 001 and 'Chairman', Insolvency and Bankruptcy Board of India, 7th Floor, Mayur Bhawan, Shankar Market, Connaught Circus, New Delhi – 110 001 as party Respondents. Necessary corrections be made in the cause title and other pages of both the appeals by 18th July, 2019.

Issue notice on the respondents by Speed Post.

Ms. Misha, Advocate appears on behalf of the 'State Bank of India'. No further notice need be issued on it. She may file reply-affidavit within two weeks. Rejoinder, if any, be filed within two weeks thereafter.

Let notice be issued on rest of the Respondents including the newly impleaded Respondents. Requisite along with process fee, if not filed, be filed by 19th July, 2019. If the appellant provides the *e-mail* address of respondents, let notice be also issued through *e-mail*.

Post the appeals 'for Admission (After Notice) on **28th August, 2019** on the top of the list.

Until further orders, operation of the impugned order of liquidation shall remain stayed.

[Justice S.J. Mukhopadhaya]
Chairperson

[Kanthi Narahari]
Member (Technical)

/ns/gc