

**In the National Company Law Tribunal,
 “Chandigarh Bench, Chandigarh”
 (Exercising the powers of Adjudicating Authority
 under the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.15/Chd/CHD/2017
 (Decided matter)**

In the matter of:

Punjab National Bank.

....Petitioner-Financial Creditor.

Versus

James Hotels Limited.

....Respondent-Corporate Debtor.

I.

CA No. 37/2018

**Under Section 19 read Section 60
 of the Insolvency and Bankruptcy
 Code, 2016.**

In the matter of:

Navneet Gupta,
 Resolution Professional,
 House No.1598 FF, Sector 22-B.
 Chandigarh.

....Applicant-Resolution Professional.

Versus

1. Harvatar Singh Arora son of Kartar Singh,
 Promoter of James Hotel Ltd., Resident of
 James Hotel, Block No.10, Sector 17-A,
 Chandigarh.
2. Ajmer Singh Bhullar son of Kewal Singh Bhullar,
 Promoter of James Hotel, Block No.10, Sector 17-A,
 Chandigarh.
3. Superintendent of Police, Chandigarh.
4. S.H.O., Police Station, Sector 17-A,
 Chandigarh.

....Respondents.

For Resolution Professional: Mr.Yogesh Goel, Advocate

For Respondent No.1: 1) Ms.D.Geetha, Advocate
2) Mr.Gurinderjit Singh, Advocate

For Respondent No.2: Mr.Pawan Malik, Advocate.

0-0-0-0-0-0

II.

CA No.17/2018

**Under Section 60 (3) and (5) of the
Insolvency and Bankruptcy Code,
2016.**

In the matter of:

Harvatar Singh Arora,
Promoter of James Hotel Ltd.,
R/o James Hotel, Block No.10,
Sector 17-A, Chandigarh.

....Applicant.

Versus

1. Punjab National Bank, 7 Bhikaji Cama Place,
New Delhi, represented by its Chairman and
Managing Director and Branch Office at LCB,
Sector 17-B, Chandigarh – 160017,
represented by its General Manager.
2. Navneet Gupta, Resolution Professional,
James Hotel Ltd., having Regd. No.IBBI/
IPA-1598, First Floor, Sector 22-B,
Chandigarh, U.T – 160022.
3. Asset Re-Construction Company (India) Ltd.,
represented by Jigar Dalal, Vice President,
The Ruby, 10th Floor, 29th Sonepat Bapat Marg,
Dadar (West), Mumbai – 400028.
4. UV Assets Reconstruction Co.Ltd., 704,
Deepali Building 92, Mr.Suraj Chauhan,
Chief Manager, Nehru Place, New Delhi–11001,
represented by its Chairman and Chief Executive
Officer.

....Respondents.

For the Applicant: 1) Ms.D.Geetha, Advocate
2) Mr.Gurinderjit Singh, Advocate

For Resolution Professional, Mr.Yogesh Goel, Advocate
Respondent No.2.

0-0-0-0-0-0

III.

CA No.176/2018

**Under Section 60 (5) (c) of the
Insolvency and Bankruptcy Code,
2016.**

In the matter of:

Kler Hotels Private Limited
through its Director Darshan Singh Kler,
Registered Office: SCO 351-352,
Sector 35-B, Chandigarh – 160022.

....Applicant.

Versus.

Resolution Professional,
James Hotels Limited,
1598, Level – 1,
Sector 22 - B,
Chandigarh.

....Respondent.

For the Applicant: Mr.Kshitij Sharma, Advocate

For the Respondent: Mr.Yogesh Goel, Advocate.

Order delivered on: 08.08.2018

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

Per: R.P.Nagrath, Member (Judicial):

ORDER

CA No. 37/2018

The petition under Section 7 of the Insolvency and
Bankruptcy Code, 2016 (for short to be hereinafter referred as the Code)

CA No. 37/2018, 17/2018 & 176/2018

IN

CP (IB) No. 15/Chd/CHD/2017
(decided matter)

filed on 21.03.2017 against M/s James Hotel Ltd. was admitted on 27.04.2017 declaring the moratorium in terms of Section 14(1) of the Code. Mr. Navneet Gupta registered as resolution professional was appointed as the Interim Resolution Professional with necessary directions vide order dated 08.05.2017. Prayer has been made in the instant application under Section 19 read with Section 60 of the Code by the Resolution Professional (RP) seeking eviction of respondents No.1 and 2 from the hotel premises.

2. It is stated that respondents No.1 and 2 got an ante dated resolution dated 10.02.2017 passed from the Board of Directors of the Corporate Debtor, but cleverly did not want their presence in the said meeting. This document is stated to have been prepared much latter. Neither this resolution was sent to the ROC, BSE or any other Authority to bring sanctity to it. Copy of the resolution is at Annexure A-2.

3. It would be proper to highlight the relevant resolutions which were purportedly passed by the Board of Directors on 10.02.2017:

“ RESOLVED THAT Mr. Haravtar Singh Arora was appointed as Managing Director on 09.04.2010 for a term of five years with no remuneration as the Company was not operational at that time. A lot of efforts were made by Mr. H S Arora to bring the Company into operation. Because of the grave efforts put in by him, the Company finally became operational with effect from 09.04.2012. Thereafter, the Board of Directors of the Company, pursuant to the provisions of Section 198, 309 and Schedule XIII of the Companies Act, 1956, passed a resolution in its meeting held on 22.10.2013 for fixation of

monthly remuneration of Rs.125000/- to be paid to Mr. H S Arora, Managing Director of the Company with effect from 01.10.2013, which was duly ratified and approved by the Shareholders in the next Annual General Meeting held on 30.09.2014.

FURTHER RESOLVED THAT the tenure of Mr. H S Arora as Managing Director of the Company expired on 08.04.2015. The Board of Directors recognized the efforts put in by Mr. H S Arora for the betterment of the Company and decided unanimously to reappoint him as Managing Director of the Company for five years with effect from 09.04.2015 at its meeting held on 16.04.2015 at the same remuneration as earlier i.e. Rs.125000/- per month. The Shareholders of the Company also approved the said resolution at the next Annual General Meeting held on 30.09.2015.

FURTHER RESOLVED THAT due to the default in repayment of the loan amount to the banks, as per the provisions of Section 198 and Schedule V of the Companies Act, 2013, the Company was required to obtain the approval of the Central Government for payment of remuneration to the Managing Director of the Company. Therefore, the Company applied for approval of Central Government by filing EForm MR-2 in Dec 2015 vide SRN No.C74153412.

*FURTHER RESOLVED THAT considering the fact that the present Managing Director is working day and night and leaving no stone unturned to run the company which is a livelihood to two hundred employees and their dependents, the Board of Directors approved the proposal to change the designation of Mr. H S Arora by giving him additional responsibility of a **CEO of the Company** with*

effect from 1st April 2017 for five years and will be reviewed thereafter.

RESOLVED FURTHER THAT Mr. Neeraj Mohindroo, Director of the Company be and is hereby authorised to give appointment Letter to Mr. H.S. Arora to give effect to the appointment with the following terms being given effect in the appointment letter:"

a) Remuneration: ₹350000/- per month at 15% annual increment.

b) In addition to above, he will also receive following perquisites:

i) Car facility with driver,

ii) Boarding and Lodging Facility at the Company's owned property.

RESOLVED FURTHER THAT the remuneration payable to Mr. H.S. Arora as CEO is subject to the approval of the shareholders at the next Annual General Meeting and approval of Central Government as the terms of appointment are at variance to the conditions specified under Section 11 of Part II of the Schedule V of the Companies Act, 2013 and such other consents and permission as may be necessary and subject to such modifications, variations as may be approved and acceptable to the appointee."

4. It is stated in the application that by this resolution, the share application money was converted into debt and close to **rupees one crore** were withdrawn by the respondents from the account of the company as a consequence of this resolution for which the account statement is annexed as Annexure A-3 (page 25-26 of the application).

5. Apart from various other allegations the relevant averment in the application, with reference to the instant application is that even after the resolution process commenced both the respondents continued to occupy the hotel premises comprising of plush lodgings and office space for themselves. Not only do they have the lodging, they are also enjoying other facilities as well, like food, drinks and all the other paraphernalia required to maintain their plush lodgings and offices. Each and every need of the respondents is taken care of by the staff of the hotel. All these facilities being provided to the respondents are not being charged even once though it costs the company lacs of rupees. It is stated that once the resolution process started, the respondents were not justified at all to continue with these facilities at the hotel. The applicant wrote number of e-mails to vacate the hotel premises but they have not complied.

6. It is further stated that the respondents have influence over the staff of the hotel and provoking them not to co-operate with the Resolution Professional. Despite all this the Resolution Professional has run the hotel successfully and created fixed deposit of 4.00 Crores in favour of the bank. The rate of profit is stated to be now between 30% to 40% of the total revenue.

7. It is further alleged that at the peak time of the Hotel business, which is the month of December, respondent No.2 triggered the strike in the Hotel with a purpose of continuing the illegal possession of the Hotel accommodation.

8. It is alleged that the staff of the Hotel was on strike on 13.12.2017. In order to secure the property of Hotel and the life of the resolution professional, CA No.225 of 2017 was filed in this Tribunal. By Order dated 15.12.2017, this Tribunal directed the police department to provide security to the resolution professional and his team. The resolution professional had number of meetings with heads of departments and the strike come to an end within a week.

9. The intention of the respondents is to have access to the events happening in the Hotel as various Heads of Departments report to them in routine. The Resolution Professional knew all this but did not interfere due to the threat from the respondents. They also even entertained many of the guests through their stay at the hotel.

10. It is further stated that when the respondents were called upon to pay for the occupation of Hotel accommodation, they simply refused to pay any amount. Even the Committee of Creditors has called upon the respondents a number of times to vacate the hotel premises but they have not done. They have rather threatened that if they were dispossessed, there would be a great amount of violence at the hotel. Copy of the minutes of the meeting of Committee of Creditors held on 14.12.2017 is at Annexure A-7. The Committee of Creditors discussed that Mr. Harvatar Singh Arora continues to have office and residence at the hotel premises. The members of the Committee of Creditors expressed the view that Mr.Arora should vacate the hotel premises with immediate effect. The Committee of Creditors authorized the Resolution

Professional to take necessary steps in this regard including directions from the NCLT. Various other allegations have been made, but the facts relevant for disposal of the prayer have been narrated.

11. Respondent No.1 initially filed preliminary objections to the instant application reserving the right to file the detailed reply after the maintainability of the petition is decided. The instant petition is stated to have been filed after expiry of 270 days of the commencement of insolvency resolution process and therefore, the Resolution Professional has no locus-standi to continue with the running of the hotel business and to continue with any process. The other question raised is whether this Tribunal has power to extend the term of Resolution Professional beyond the statutory period and without taking voting in view of clear divergent view against the members of Committee of Creditors. The other challenge is that the application for seeking eviction is not maintainable before NCLT. In support of this contention, reliance is placed upon the order dated 22.02.2018 of the NCLAT in **Company Appeal (AT) (Insolvency) No.290 of 2017 M/s. Subasri Realty Private Limited vs. Mr. N. Subramanian & Anr**, wherein it was held that after appointment of Resolution Professional and declaration of moratorium, the Board of Directors stands suspended, but that does not amount to suspension of Managing Director or any of the Director or Officer or employee of the Corporate Debtor. We may, however, observe here that it is not any body's case that the respondent No.1 has been removed from designation as Managing Director. The issue is entirely different.

12. Reference is also made to the minutes of the meeting of Committee of Creditors held on 17.01.2018 in which the representative of Punjab National Bank expressed the view that the Code has given 270 days to decide on the resolution process and further extension granted by NCLT is not pertaining to the resolution process, but the Committee of Creditors should decide the matter within 270 days. Copy of the minutes of the meeting are at Annexure R-3. It is stated that the period for completion of the resolution process expired on 23.01.2018 and therefore, the application may be dismissed.

13. The detailed reply however, has been filed by the respondent No.2. Admittedly, both the respondents No.1 and 2 are the promoters of the company. When the matter was listed on 13.03.2018, the respondent No.2 was also directed to file reply to the application on merits. After a couple of adjournments, learned counsel for respondent No.1 stated on 14.05.2018 that the respondent No.1 adopts the reply filed by respondent No.2

14. In the reply filed by respondent No.2, a preliminary objection has been raised that the COC has not been impleaded as a party. The application is said to be the counter blast to various complaints of mis-management and illegal actions against the resolution professional. One such complaint is at Annexure R-2/1 made to the Insolvency and Bankruptcy Board of India (**for brevity 'IBBI'**). The application under Section 19 of the Code is not maintainable as it is applicable only in the case of Interim Resolution Professional and not the

Resolution Professional and no prayer is covered within the provisions of Section 60 of the Code. Even the appointment of Resolution Professional and constitution of COC has been assailed.

15. It is further stated that both the respondents have been performing their respective duties and devoting time to run the hotel as the Resolution Professional does not have the expertise to run this business. Further that the Resolution Professional is guilty of violation of moratorium for not taking action against the creditors who have violated the moratorium and therefore, the order of admission is liable to be recalled. The nature of the prayer made in the application has nothing to do with the resolution process. Further the issues involved in this application are of complicated nature, which cannot be decided by the Adjudicating Authority which is to follow the summary procedure.

16. Some of the facts which the respondent has highlighted are that the claim of the respondent was initially declined illegally on the ground that the matter was sub judice. It is stated that the resolution professional-applicant has permitted the bank official to have access to the important confidential record of the company, for which the photographs are at Annexure R-2/2; that the valuer has been appointed at the instance of the Financial Institutions after taking approval from the COC, which is in violation of the mandatory provisions of timelines as well as the duty of the resolution professional to perform; that all the accounts have been closed and transferred to the creditors and that fixed deposits created with the creditor bank and many others.

17. Respondent No.2 has taken a specific plea that the resolution of the COC on the basis of which the instant application has been filed, does not refer to his name. In fact this respondent has made huge investments in the business of the corporate debtor from time to time by way of unsecured loan, which was spent on the construction of hotel and creating assets. The respondent is a major shareholder in the company. Further the resolution professional was not qualified to act as registered resolution professional for the period from 07.07.2017 to 24.07.2017 as his initial period of registration expired on 06.07.2017, but he could not clear the test despite several attempts and ultimately cleared it and registered himself on 25.07.2017. Copies of the print outs of registration of the respondents are at Annexure R-2/4.

18. It is further stated that the facilities being availed by both the respondents are hardly anything keeping in view the time spent by them on the operations of the hotel. The averments have also been made that the petitioner is permitting secret persons, who have been continuously coming to the hotel and having access to the confidential information and giving instructions to the managerial and other staff and using the official email of the resolution professional.

19. Challenge is also made to the confirmation of applicant as a resolution professional by the COC. The petitioner in fact has been considering his duty as a resolution professional as part time job of the hotel and performing the entire duty only with the assistance of the respondents and staff of the hotel.

20. With regard to the resolution of the company dated 10.02.2017, which has been attacked by the resolution professional as fabricated, it is stated that the minutes of the meeting were uploaded on the same day on the website of SEBI and there is proof of such uploading. It is pertinent to mention here that no document in support of this assertion has been filed by the respondent. It is, however, stated that the resolution dated 10.02.2017 was immediately given effect. The resolution professional in the rejoinder re-iterated that the resolution dated 10.02.2017 was not uploaded on the website of SEBI with regard to the appointment of respondent No.1 and fixing his remunerations. The law does not require the sending of the said resolution dated 10.02.2017 to ROC or BSE. The resolution dated 10.02.2017 regarding the appointment of respondent No.1 as CEO was subject to clearance in the AGM, but the resolution professional did not put the said agenda before the AGM in violation of the law.

21. It is further averred that the resolution professional permitted respondents No.1 and 2 to avail all the facilities which are sought to be withdrawn by way of this application. In any case, if the said resolution was placed before the AGM and in the event of the same having failed, the respondents No.1 and 2 were only required to return the amount received consequent to the said resolution, but there is no provision for their eviction from the hotel. It is admitted that both these respondents have been staying in the hotel during their visit to India from the period much before the initiation of the insolvency resolution process

and even the resolution professional has consented to grant such facility throughout. Having realised that the agenda in respect of the approval of resolution dated 10.02.2017 was not placed before the AGM despite having taken services of respondents No.1 and 2 to run the hotel, the resolution professional has tried to get out of the legal action and consequences thereof. The respondents are staying in a portion of the hotel by way of their right of ownership having 60% of the shareholding and their claims have not so far been rejected. It is also known that the costs of lodging and food in respect of the respondents is negligible as compared to amount of work being performed by them.

22. It is further stated that the value of the hotel property is more than ₹500 crores even at the distress sale but the resolution professional has shown the value at ₹230 crores only whereas the total debt of the corporate debtor is only ₹100 crores and thus, the remaining amount of value of the hotel belongs to the respondents. The prayer made by the petitioner before this Tribunal is moreover not permissible after the completion of the moratorium period. The plea that the respondents have instigated the staff not to work has been denied.

23. The fixed deposit which the resolution applicant claims to have been made from the earnings of the company after his appointment is also challenged and it is claimed that the said fixed deposit is on account of the stoppage of the payment of vendors and cost cutting which has resulted in depletion of assets and bringing down the quality. The resolution professional is stated to be acting on behalf of the PNB to close

the hotel and give possession to the said financial creditor. Allegation has also been made that the resolution professional has changed the staff of the hotel in the accounts department and removed CFO, Company Secretary and appointed another GM whereas already GM was there. He has changed the vendors at his choice in place of old vendors without any reason.

24. So many counter allegations have been made with regard to the strike by staff of the hotel, but those are not at all relevant to the controversy. It is, however, stated that only on account of the efforts being made by respondents No.1 and 2 that the hotel business is still survived otherwise it would have been closed due to the indifferent attitude of the resolution applicant. It is denied that the respondents even pretended that they have close relations with the powerful persons in the Administration or political circles.

25. The resolution professional has also filed rejoinder to the reply filed by the respondents. With regard to the claims made by the respondents before the resolution professional, those have been decided by carrying out extensive research and related documents. The resolution professional was constrained to decide the claims with the help of whatever documents available.

26. With regard to the validity of the certificate of registration held by the applicant, it is stated that as per the IBBI Regulations, any assignment allotted during preliminary registration will continue to be with the said resolution professional till conclusion of the resolution process.

In the meantime, the resolution professional also qualify for permanent resolution professional. The applicant, therefore, cleared his tests within the prescribed period and therefore, was always eligible to act as interim resolution professional or the resolution professional.

27. It is stated that the respondents No.1 and 2 have been using the facility of the hotel accommodation at the public expenses which has invested money in the company. Regarding allegation of engaging various persons for running the hotel business, it is stated that the resolution professional is an individual and certain number of persons are required to carry out various functions of the business of the hotel. He is performing his duties provided under the Code and the Regulations framed thereunder and if a particular account book is to be studied, an expert has to be engaged for the purpose.

28. Regarding the salary and other facilities being enjoyed by the respondent No.1, it is averred that the Ministry of Corporate Affairs by its order dated 15.03.2017, rejected the same. The company is a public listed company having about 3500 shareholders and the respondents cannot have the right to use the hotel facilities and stay permanently there.

29. With regard to dues of the vendors and employees the same are being regularly paid. Recently they have also been granted increments. So many other responses have been furnished in the rejoinder.

30. We have heard the learned counsel for the Resolution Professional and the learned counsel for both the respondents and carefully perused the records.

31. The gist of the elaborate pleadings has been given by us while narrating the facts relevant to the disposal of instant application. The issue under consideration is whether the respondents No.1 and 2 can be asked to vacate the facility of the hotel accommodation during the insolvency resolution process. Rest of the pleadings would be quite insignificant.

32. The respondent No.1 claims to be entitled to continue to occupy the hotel rooms on the strength of a resolution dated 10.02.2017 Annexure A-2, which is, however, under attack of being a forged and ante dated document. It would be seen that the petition under Section 7 of the Code was filed by the Punjab National Bank against James Hotels Limited by diary No.2142, dated 21.03.2017 and the resolution in question came into being just about 1½ months before filing of the petition. It is evident from the resolution Annexure A-2 that the meeting of the Board of Directors was allegedly held after a gap of more than one and half year after the last meeting dated 01.07.2015 without going deep into the controversy as to whether this resolution dated 10.02.2017 is ante dated or forged the same being under enquiry/consideration of the Resolution Professional, we would discuss the effect of this resolution even if the same was really passed. As already observed, the respondents have not placed on record any document to substantiate the

plea that copy of this resolution was ever filed with the SEBI being a listed company or the other relevant stock exchange or with any other statutory authority to attach authenticity thereto.

33. The resolution Annexure A-2 says that the tenure of respondent No.1 expired on 08.04.2015 as Managing Director. Board recognised the efforts put in by respondent No.1 and unanimously decided to reappoint him for a period of five years from 09.04.2015. In the meeting held on 16.04.2015, on the same remunerations as earlier @ ₹1,25,000/- per month, which was also approved in the general meeting of the shareholders on 30.04.2015. In this resolution (Annexure A-2), it was further resolved that due to the default in repayment of the loan amount to the Banks, the company was required to obtain approval of the Central Government for payment of remunerations to the Managing Director and the application in Form MR2 was filed in December, 2015. It was also decided that respondent No.1 was working day and night and it was decided that he be given additional responsibility of CEO of the company w.e.f. 01.04.2017 for five years. It was also resolved to increase his remunerations to ₹3,50,000/- per month with annual increase of 15% and he was also entitled to the facility of boarding and lodging at the company's owned property apart from Car facility with the driver.

34. The petition under Section 7 of the Code was admitted by this Tribunal on 27.04.2017. There is nothing on record to suggest that the decision taken on 10.02.2017 was ever conveyed to any authority or even for approval of increase in the remuneration to the Central

Government despite the company going in losses. In any case, in this resolution, it was also decided that the remunerations payable to the respondent No.1 would be subject to the approval of the shareholders in the next general meeting, but before that the petition under Section 7 of the Code was admitted.

35. The Resolution Professional-applicant filed CA No.94 of 2018 by diary No.833, dated 20.03.2018 and placed on record Annexure A-8, the letter dated 08.03.2017 issued by the Government of India, Ministry of Corporate Affairs. It was conveyed to the corporate debtor that the matter regarding the appointment of respondent No.1 as Managing Director and extension of the period of five years w.e.f. 09.04.2015 and the payment of remuneration of ₹15 lacs per annum for a period of three years w.e.f. 09.04.2015 to 08.04.2018 was examined and the company having failed to furnish the requisite information as requisitioned vide letter dated 06.05.2016 and subsequent final reminder dated 01.08.2016, the application made by the company under Sections 196 and 197 read with Schedule V of the Companies Act, 2013 was rejected and the file was closed. So, when even the previous remunerations were not approved, there could be no weight to the subsequent resolution of increasing remunerations or the grant of facility of occupying the hotel accommodation as such. We are of the firm view that the resolution dated 10.02.2017 would not create any right in favour of respondent No.1 to continue to occupy the hotel accommodation. It is pertinent to mention that there could be attached some authenticity to the

resolution dated 10.02.2017, it is shown that the meetings of Board of Directors were being convened in the normal course. This resolution Annexure A-2 shows that the Board meeting was being held on 10.02.2017 after the last meeting of the Board dated 01.07.2015. Section 173 (1) of the Companies Act, 2013 which came into force w.e.f. 01.04.2014, says that every company shall hold the first meeting of the Board of Directors within thirty days of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board. There this resolution cannot be prima facie accepted as a genuine document.

36. Now we discuss the powers and duties of the resolution professional. Section 18 of the Code provides for duties of the Interim Resolution Professional. It says that the interim resolution professional shall perform the following duties namely;

- (a)
- (b)
- (c)
- (d) *monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;*
- (e)
- (f) *take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate*

debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
- (ii) assets that may or may not be in possession of the corporate debtor;*
- (iii) tangible assets, whether movable or immovable;*
- (iv) intangible assets including intellectual property;*
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
- (vi) assets subject to the determination of ownership by a court or authority;*
- (g) to perform such other duties as may be specified by the Board.*

Explanation.—For the purposes of this sub-section, the term "assets" shall not include the following, namely:—

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;*
- (b) assets of any Indian or foreign subsidiary of the corporate debtor; and*
- (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.*

37. Sub-section (2) of Section 23 of the Code says that the resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.

38. Section 25 (1) of the Code further says that It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor. Clause (a) of sub-section (2) of Section 25 of the Code says that the resolution professional has to take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor.

39. So all these functions of the Resolution Professional pertain to the insolvency resolution process. Clause (c) of sub-section (5) of Section 60 of the Code says that notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a)

(b)

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

The above provision has a very wide scope and would include the power to get possession from the person in unauthorised possession of any portion of the asset of the Corporate Debtor.

40. Learned counsel for the respondents vehemently contended that the prayer for seeking eviction of the respondents No.1 and 2 from the premises of the hotel is not maintainable before this Tribunal and the remedy should lie elsewhere. We are not convinced with the aforesaid argument because the Resolution Professional has been appointed by this Tribunal and he is supposed to perform his duties and exercise power under the Code and the Regulations framed thereunder. He cannot be relegated to remedy before the Civil Court to seek possession of the portion of the hotel premises, which is unauthorisedly occupied by any person. The Board of Directors has been suspended and the Resolution Professional has taken over the control of business of the corporate debtor and therefore, no one can have absolute right to stay in the hotel, whether he has such a right as a licensee who is allotted the hotel rooms as guests on payment of the requisite charges. The portion occupied by the respondents can be better utilised for the furtherance of hotel business.

41. The learned counsel for the respondents further contended that while adjudicating the claim of the respondents, the Resolution Professional has deducted the amount of rent for the hotel accommodation for the period, they are occupying and also on the food items and this act would amount to the consent to continue with the occupation of the hotel accommodation. We are of the considered view that in one there is wrong determination of the claim, the respondents may have independent right to apply to this Tribunal to challenge such

an action, but not to oppose instant application. The respondents could at best be licensees and the law is well settled that a licensee in unauthorised possession can be thrown away even by use of force. The respondents cannot claim themselves to be the tenants in the premises of the hotel. With the passing of the order of admission and commencement of the insolvency resolution process, even the said licence, if any, stood automatically terminated.

42. The learned counsel for respondent No.2 also submitted that there was no decision of the COC authorising the Resolution Professional to seek eviction of this respondent. We are of the view that for taking such an action, the Resolution Professional has the duty to perform and there is no need even for seeking approval/consent from the COC. In any case, respondent No.2 has not shown any independent right to occupy any portion of the hotel premises either as a licensee or as a tenant or in any other capacity.

43. Having given our thoughtful consideration to the contention on behalf of the respondents, we are unable to accept the submission that respondents No.1 and 2 can be permitted to continue in occupation of the hotel accommodation despite the corporate debtor undergoing the insolvency resolution process. Respondent No.1 is claiming some right on the basis of a resolution dated 12.02.2017 in his favour, which has been seriously attacked by the Resolution Process as ante dated document, but the respondent No.2 even does not have any material on record to justify his occupation in the portion of the hotel accommodation.

44. In view of the above discussion and finding no justification in the defence of respondents No.1 and 2, we allow this application and direct respondents No.1 and 2 to vacate the hotel accommodation within a period of three weeks from the date of receipt of the certified copy of this order, failing which the Resolution Professional shall have the right to eject the respondents with the police help by moving appropriate application before the District Police Chief as well as to the District Administration Chandigarh, who would provide the necessary assistance.

CA No.17/2018:

At the outset, it is pertinent to mention that notice of this application was not issued to respondent Nos.1, 3 and 4, the financial creditors.

2. This application has been filed by Mr. Harvatar Singh Arora, promoter-Director of suspended Board of Directors of the corporate debtor under Section 60 (3) and (5) of the Code impleading the Punjab National Bank, financial creditor, the Resolution Professional and two of the Assets Reconstruction Companies the other financial creditors as respondents. Punjab National Bank as a financial creditor filed petition under Section 7 of the Code for initiating insolvency resolution process against James Hotels Limited, the corporate debtor which was admitted by this Tribunal on 27.04.2017 declaring moratorium in terms of Section 14(1) of the Code and vide order dated 08.05.2018, Mr. Navneet Gupta,

CA was appointed as the Interim Resolution Professional with necessary directions.

3. It is stated that the applicant is not only the shareholder but also the guarantor for the corporate debtor. He is a NRI and native of Punjab. State Bank of India (SBI) sanctioned loan of ₹ 200 crores in 2007 out of which a sum of ₹ 45 crores was released towards the first instalment, but denied to release further instalments. Ultimately in the year 2010, SBI gave no objection to approach the Punjab National Bank (PNB) for further funding. PNB granted loan of ₹ 28 crores and they again forced them to approach UBI to complete the project and the corporate debtor obtained another amount of ₹10 crores as loan. The complete history how the investment was made in the corporate debtor has been disclosed which is not of much importance for disposal of this application. It is stated that PNB had declared the accounts of the corporate debtor as NPA as would be evident from the notice under Section 13(2) of SARFAECI Act. Thereafter PNB also issued notice under Section 13(4) of the said Act and obtained orders from the District Magistrate, Chandigarh for taking physical possession of the corporate debtor.

4. It is stated in this application that no voting took place with regard to the confirmation of the appointment of Interim Resolution Professional (IRP) as the Resolution Professional (RP) and the IRP continued as RP in connivance with the secured creditors. Reference is made of nine meeting of the Committee of Creditors held between

CA No. 37/2018, 17/2018 & 176/2018

IN

CP (IB) No. 15/Chd/CHD/2017

(decided matter)

27.05.2017 to 22.12.2017. It is alleged that PNB had earlier tried to take possession of the premises of the Hotel but the Debt Recovery Tribunal (DRT) passed detailed order dated 30.08.2016 and exposed the malicious and fraudulent approach of PNB towards the corporate debtor and it is stated that the Resolution Professional is acting as an agent of the secured creditors.

5. It is stated that the moratorium declared by this Tribunal is being violated as the cases pending before various courts/forums/Tribunals/ authorities including the Hon'ble Punjab and Haryana High Court are being proceeded simultaneously and therefore, it is violation of the moratorium declared under Section 14 of the Code and amounts to offences under Section 70(2) and 74(1) of the Code. It is further stated that PNB continued with the proceedings in connivance with Respondent No. 2 (R-2) before the Debt Recovery Appellate Tribunal (DRAT) against the order dated 30.08.2016 of DRT. In fact four different orders have been passed by DRAT, Delhi during the moratorium period and both PNB and RP concealed before those forums about the moratorium granted by this Tribunal. DRAT has also imposed ₹ 10,000/- upon the suspended Director for non-appearance and threatened to issue non-bailable warrants.

6. Thirdly that the recovery proceedings filed by PNB in OA No. 2022 of 2016 on the file of DRT-II has been continued and the matter was fixed for 14.02.2018. PNB had even preferred CWP No. 24392/2016 before the Hon'ble Punjab and Haryana High Court to direct the District

Magistrate to give necessary assistance to take possession of the corporate debtor. That matter was fixed before the Hon'ble High Court for 05.02.2018 and PNB had been contesting all those matters simultaneously. It is stated that the relief in CWP aforesaid has been rendered infructuous as the RP is already in possession of the corporate debtor which fact was not brought before the Hon'ble High Court.

7. Further liquidation proceedings initiated by the United Bank of India bearing CP No. 48/2016 and another CP No. 26/2013 filed by the same creditors are also pending adjudication in the said case. United Bank of India has obtained interim injunction on 11.04.2016 and all those proceedings are continuing unabated. This jeopardizes the entire scheme of moratorium. It is further stated that R-2 - RP have violated various provisions of the Code and IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the details of which are mentioned in the application.

8. It is further stated that the RP has failed to adjudicate the claims of employees and other financial creditors for which the matter is pending under CA No. 172/2017 before this Tribunal. It is stated that the applicant filed CA No. 172 stating that his claim was not decided by the RP. The adjudicating authority disposed of the said application on 12.12.2017 directing the R-2 to adjudicate upon the issue but he is delaying the same on one pretext or the other. It has further been alleged that there is inaccurate liquidation value of the company submitted by R-2. Though the provisions of the Code and the Regulations cast a duty

upon the RP to appoint registered valuers, the RP has gone to the Committee of Creditors for taking decision on the valuers. ARCIL, the Assets Reconstruction Company was given the choice to recommend Creative Consortium, Chandigarh as valuer and PNB also gave the list of valuers. The RP appointed the same valuers and copy of the e-mail and minutes of meeting in this regard have been annexed as Annexure A-6. In fact, none of the valuers appointed by PNB visited the property of the corporate debtor to physically verify the infrastructure and the fixed assets. The valuation was done as Desk Top value without any physical verification.

9. On 27.04.2017 i.e. the date of commencement of insolvency process, the corporate debtor had other assets worth 8-9 crores. It is stated that all the respondents in this application including the RP removed the aforesaid assets from valuation. These assets included bank balance, cash in hand, deposits, loans and advances and receivables. The value of these assets represents 6.20% of the admitted claims of creditors. Copies of Assets and Liabilities Statement and figures of liquidation value are annexed at Annexure A-7.

10. Further the RP appointed one Mr. Ajay Vij as his representative to work on his behalf without any authorisation which is violation of Section 28(1) (h) of the Code. Mr. Ajay Vij aforesaid is giving directions for managing the day to day affairs of the corporate debtor which is impermissible. R-2 has even changed the terms of employment of Mr. B.B. Goel, Mr. H.S. Arora, Mr. Ajmer Singh Bhullar, Mr. Taman

Singh Arora, Mr. Neeraj Mohindroo. Copies of e-mails to prove these violations, are attached as Annexure A-8. The RP has even delayed the preparation of Information Memorandum and the Memorandum prepared is in violation of Section 29 of the Code and Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short, the Regulations). The RP has to submit the Information Memorandum in electronic form to each member of the Committee and any potential resolution application relating to the matters mentioned in para (a) to (i) of Regulation 36(2) of the Regulations and further for the matters listed in para (j) to (l) of Regulation 36(2) within 14 days of the first meeting. Therefore, it had to be provided to the Committee of Creditors before 29.05.2017 and complete Information Memorandum by 12.06.2017. However, in this case, the Information Memorandum was finally approved by the Committee of Creditors on 19.09.2017 i.e. in the 4th meeting of the Committee of Creditors after the expiry of 145 days of the insolvency commencement date. It is further stated that the total period of insolvency process is 180 days in terms of Section 12(1) of the Code and a resolution applicant under Regulation 39 of the Regulations is expected to submit a resolution plan preferably within 150 days of the insolvency commencement date. So it was with a motive to derail the process that the Information Memorandum was prepared so late.

11. Further, R-2 changed the minutes of meeting of 4th meeting of Committee of Creditors before filing these in this Tribunal. There was no item in the Agenda to discuss about the filing of application for

extension of time for CIRP proceedings and it was discussed in the meeting without agenda and it was agreed to file for extension of 45 days but later on he changed the time to 90 days of extension.

12. It was thereafter prayed that either the Committee of Creditors or the resolution process should not continue any further and the same should be suspended forthwith. It was also prayed that R-2 (RP) has failed to initiate penal action under Section 236 of the Code as PNB and Reconstruction Companies are liable for punishment under Section 74(2) of the Code. Even the Committee of Creditors has failed to take action against R-2 – RP under Section 70(2) of the Code. The application has been filed with a prayer to appoint independent valuer; suspend the Committee of Creditors and resolution proceedings; restrain the RP to continue the resolution process and initiate criminal prosecution against the respondents.

13. In the end, it is stated that the applicant filed CWP No. 29553/2017 before the Hon'ble Punjab and Haryana High Court in which the Hon'ble High Court has passed order dated 21.12.2017 (Annexure A-10) vide which the Hon'ble High Court has issued notice of motion to the respondents in the CWP and in the meantime, the NCLT has been directed not to pass final order. Though the copy of the petition filed before the Hon'ble High Court has not been annexed, it is observed by the Hon'ble High Court in the Order (Annexure A-10) that the counsel for the writ petitioner submitted that Insolvency and Bankruptcy (Amendment) Ordinance, 2017 is under challenge in CWP No.

27730/2017 and while issuing notice of motion, petition filed by the applicant – Ajmer Singh Bhullar and another, has been directed to be taken up along with other Writ Petitions.

14. Notice of this application was directed to be issued even to the Resolution Professional respondent No.2 only as evident from the order dated 17.01.2018. In the reply filed by the Resolution Professional impleaded as R-2, it is averred that the applicant and his associates have indulged in criminal acts causing huge losses to the company and now they are trying to level false allegations to shift the blame. The application is said to be the consequence of an order passed by this Tribunal on 12.12.2017 whereunder the Tribunal directed RP to adjudicate upon the claim made by the applicant. It was observed in the said order that for the said purpose, RP could call further information including proof of claim. Resolution Professional was also at liberty to call the information as to the mode and proof thereof, how the money was put into the account of the company. It is stated that the applicant being a NRI who was supposed to route the money through the banking channels after informing the Reserve Bank of India. The respondent asked for the said information which the applicant and his associates have not provided so far. The applicant has taken the excuse that the entire record is lying with the company but no such documents have been found in the record of the company.

15. It is further stated that on the very next day of the order dated 12.12.2017 passed by this Tribunal in CA No. 172/2017 aforesaid

filed by the applicant, the employees of the Hotel stuck work at the instigation of the applicant. It was however be observed at this stage that the merits of this allegation as to who triggered the strike need not to be gone into because this Tribunal has not to probe this aspect.

16. It is further stated in the reply that the Resolution Professional then had to move CA No. 225/2017 under Section 19 of the Code that the RP is facing serious problems and difficulties in the performance of his duties because of the rising disturbance and problems created by the staff of the hotel and others. That application was taken up by this Tribunal on 15.12.2017 and notice thereof was issued to the Senior Superintendent of Police, Chandigarh for 11.01.2018 and in the meantime, directions were issued to provide adequate security to the Resolution Professional and his team. The facts in this paragraph of the order have been taken from the record of the file.

17. The RP has also stated that he was able to contain the strike and bring an end thereto within one week, which otherwise caused huge losses to the hotel business. It is also alleged that during the course of insolvency resolution process, R-2 found that an amount of ₹ 2 crores was shown as cash in hand whereas there is no space in the hotel where such a huge cash could be stored. Allegation is made that all this amount was shown in the record to siphon off money from the company. At the time of demonetisation, the entire cash in hand was deposited in the Bank. Subsequent to the demonetisation till March, 2017, huge stock of linen was shown to have been purchased comprising of the towels, bed

sheets etc. and the bills were generated from two companies which have been signed by only one person. It is stated that these bills were generated in order to show withdrawal of cash in hand but no such goods were received in the hotel unit nor there is any such record. The Income Tax Department had also imposed penalty of more than ₹1 crore on the hotel which had to be paid. Copy of the order passed by the Income Tax Department is at R-2/4. The order is dated 31.03.2015 in respect of the Financial Year 2012-13. Elaborate allegations have been made how the amounts of the company for the previous years were being siphoned off but this part of the allegation is not very relevant for the disposal of the instant application.

18. However, emphasis has been laid on the resolution dated 10.02.2017 which is shown to have been passed before the admission of the application filed by Punjab National Banks under Section 7 of the Code. That resolution is stated to be a fabricated documents just to show that resolution was passed so that share application money could be disbursed back to the applicant and others but due to the stay order passed by Company Law Board in a petition under Section 397-398 etc. of the Companies Act, 1956, it could not be done. Copy of this resolution was also not filed with the relevant authorities.

19. By aforesaid resolution which is ante dated, the applicant in conspiracy with other Directors got themselves appointed to various posts in the company apprehending appointment of the Resolution Professional. This document was prepared so that other Directors of the

company continue to enjoy all the authority in the working of the company and they could enjoy access to the record of the company.

20. However, the Ministry of Corporate Affairs passed an order in March, 2017 whereby it rejected the payment of any salary to the applicant. By the resolution in question, the salary of the applicant was increased from ₹ 1.25 lacs to ₹ 3.5 lacs. The applicant had also withdrawn salary for the months of May, June and July, 2017 which was an illegal act.

21. Allegations have also been made with regard to the illegal occupation of hotel premises by the applicant for which a separate application bearing No. CA 37/2018 for eviction has been filed by the Resolution Professional. It may be observed here that these allegations relating to the resolution of the company dated 10.02.2017 as contained in the previous 3 paragraphs have already been dealt with while disposing of CA No.37 of 2018 by the order passed today.

22. It is further stated that in all meetings of the Committee of Creditors held by the Resolution Professional, unanimous decisions on every issue were taken. The meetings were held in the presence of all the necessary members duly recorded in each of the Committee of Creditors meeting. It is denied that R-2 has violated any provisions of the Code.

23. With regard to pursuing of the proceedings before different courts/forums, it is stated that the RP made it very clear that the factum

of the moratorium granted by the Tribunal be brought to the notice of various courts/presiding officers and despite this, Directors of the company have been appearing before the different forums. There are certain repeated allegations in the application as well as in the reply, though the parties should have understood that their pleadings have to be precise and concise. It is further stated by the RP that for many years, the hotel business had been running in losses but with the takeover by the RP, the business of the corporate debtor has started generating profits after a number of years only because the respondent has run the unit efficiently and honestly.

24. With regard to the removal of the existing employees of the hotel, it is stated that only one employee was removed from service and his claim has also been settled by the RP to the tune of ₹ 1.5 lacs though he set up the claim for ₹ 24 lacs.

25. With regard to the appointment of the valuers, it is stated that the respondent appointed best valuers available in the market who are retired Chief Engineers and have impeccable record. Those valuers have also been engaged by reputed institutions. They had visited the site a number of time and not just once for the purpose of valuation. The valuation shown in the Information Memorandum (IM) reflects the value of land, building, plant and machinery. The respondent even asked the CFO of the company to prepare the details of the inventory and other assets but he never provided the same despite repeated requests.

During verification, large amount of serious discrepancies and fraud were

found in the inventory and other financial assets which were duly communicated to the Committee of Creditors. The RP has a team of his associates who even keep on reporting about various issues. For the claims submitted by the applicant and other Directors, the RP appointed an independent Chartered Accounts to go through the accounts and send the report to him but the final decision is always taken by the respondent.

26. It is also averred that the applicant made allegations against Mr. Ajay Vij for the reasons that Mr. Vij had been making honest reporting to the Resolution Professional. With regard to the removal of Mr. B.B. Goel, an employee of the hotel, it is stated that the Registrar of Companies has filed prosecution against the said person for various acts of omission and commission. Mr. Goel himself resigned from the post of CFO.

27. With regard to delay in preparing the IM, it is stated that for preparing the Information Memorandum, a lot of information was required to be collected. All the issues pertaining to the defalcation committed in the running of the hotel for the earlier period took time in resolving certain matters and therefore, the IM could be prepared on gathering the required information. Therefore, there was delay in preparing the IM. The matter was also brought to the notice of the Committee of Creditors which took cognizance of the entire facts and circumstances of the case. Even now these aspects are being investigated as to what other crimes are committed by the previous management. Prayer was made to dismiss the application.

28. The applicant Harvatar Singh Arora also filed rejoinder. Emphasis has been laid on the time limit for completion of the insolvency resolution process, which is maximum 270 days as per Section 12 of the Code. It is stated that the order passed by the Hon'ble High Court on 21.12.2017 in CWP No.29553 of 2017 is to direct the NCLT not to pass the final order in respect of the matter of the corporate debtor, but that order by no means has stayed the working of the resolution professional. Under the garb of the order of the Hon'ble High Court, the resolution professional is dragging on with the resolution process to an endless period.

29. Reference is also made to 11th meeting of the COC held on 17.01.2018 whereby the representative of the Punjab National Bank raised a point that maximum time limit provided under the Code to complete the insolvency resolution process is 270 days. It was further observed that the extension by the NCLT was not pertaining to the resolution process and the committee should decide the matter within 270 days.

30. It may be observed that the perusal of the minutes dated 17.01.2018 would show that one M/s Ishan Developer and Infrastructures Limited wanted to furnish the resolution plan, but it was noticed that the initial amount i.e. earnest money of 5,00,000/- even has not been deposited despite repeated reminders. After a detailed deliberation, the proposal of M/s Ishan Developer and Infrastructures Limited in submitting the resolution plan was not accepted by the requisite majority. Similarly,

the resolution plan of the ARCIL, the other resolution applicant was also considered and rejected.

31. The allegation of the applicant is that after expiry of 270 days, the resolution professional has lost his locus-standi to continue with the resolution process.

32. Reference has also been made to order dated 25.01.2018 passed by the DRAT, wherein it was contended by the learned counsel for the Punjab National Bank being the applicant that the moratorium period under I.B.Code has already expired so far as the corporate debtor is concerned and therefore, now there is no obstacle in the way of the Bank for proceeding further with the measures to recover its dues in accordance with law. Copy of the order of DRAT is at Annexure A-1. In view of the aforesaid submissions by the Punjab National Bank, it is quite clear that the Bank does not want to continue with the resolution process before this Tribunal. It is also reiterated that the resolution professional is evading to determine the claim of the promoters/unsecured creditors.

33. It is further stated that the resolution professional is simply trying to put the property of the hotel into distress sale as per the valuation report. The total value of the property has been determined as ₹230 crores for the distress sale whereas liability of the secured creditors can be settled only at ₹100 crores and the rest of the amount belongs to the promoters. In view of the aforesaid fact the resolution professional is not finalizing the claims. There are then the elaborate allegations some of which were taken in the application and thus have been repeated.

34. We have heard the learned counsel for the parties and perused the record quite carefully. The learned counsel for the applicant has also filed the written submissions.

35. We find that the application is full of ambiguity and vagueness and attempt seems to have been made to create total confusion instead of resolving any issue. If the applicant had any specific grievance for a particular violation or on the issue of non-decision of the claim by moving a separate application, but making averments on so many aspects together would not lead us anywhere. This is a simple attempt of the applicant to complicate the issues without any fruitful result.

36. We may refer to series of events which would throw light on the issue as to what prompted the applicant-director of the suspended Board of Directors, in filing such an application. CA No.126/2017 was filed by Haravtar Singh applicant herein under Section 75 read with Section 236 of the Code with a prayer to recall the order of admission passed by this Tribunal and appointment of Interim Resolution Professional on the ground that the charge held by Punjab National Bank-Financial Creditor had already been assigned to the Asset Reconstruction Company (India) Limited. It may be noted that in view of the contention raised on behalf of the applicant that the Punjab National Bank has played a fraud, by order dated 23.08.2017, the matter was listed for arguments to 29.08.2017 and in the meanwhile, the Registrar of Companies, Punjab and Chandigarh was directed to preserve the

CCTV footages relating to the visitors entering the premises of ROC for one month upto 01.08.2017. This application filed by Haravtar Singh Arora was dismissed by this Tribunal by a detailed order dated 04.10.2017 finding no merit in the same. It was observed that the application is totally frivolous, mala fide and filed apprehending consequences of the expiry of the period of the insolvency resolution process from the date of admission of the application.

37. Another observation was made by this Tribunal in the order dated 04.10.2017 while dismissing the application that in the written submissions, the Managing Director of the Company has referred to certain proceedings held by this Tribunal to press upon the contention that in the circumstances of the case, this Tribunal has taken cognizance of the offence, therefore, a direction should be given for lodging the complaint and for investigation. It was held that this contention deserves to be out rightly rejected, as holding of the proceedings for disposal of the application under consideration, cannot by any stretch of imagination amounts to taking cognizance of the alleged fraud.

38. It would be seen that CA No.172 of 2017 filed by Haravtar Singh Arora with the grievance that his claim was not being decided by the resolution professional. By order passed on 12.12.2017, it was held that the claim by a person submitted pursuant to the advertisement has to be independently verified by the Resolution Professional irrespective of the pendency of the company petition. The question, whether the

applicant could be a financial creditor or not is also to be adjudicated upon by the Resolution Professional. He may call for the necessary proof of the claim. It was also observed that the Resolution Professional may call for the information by sending email from the applicant including proof of the claim within the prescribed period and the Resolution Professional shall take a decision thereon within the period prescribed. Since the entries made in the books of accounts of the company relating to the issue are under challenge in the company petition pending on the ground of mis-management and oppression, the Resolution Professional shall be at liberty to call for the information as to the mode and proof thereof how the money was put in the account of the company. With these directions, the said application was disposed of.

39. Reference has already been made to the order dated 15.12.2017 passed by this Tribunal in CA No.225 of 2017 filed by the Resolution Professional, whereunder, his grievance of threat perception due to strike by the staff was met.

40. So, these are some of the allegations in the said application. The resolution professional contends that by exercise of due diligence, the strike could be controlled.

41. The period of 270 days from the insolvency commencement date has already expired. Section 33 of the Code says that where the Adjudicating Authority does not receive a resolution plan within the maximum period provided for the completion of the insolvency

resolution process, the Adjudicating Authority has to pass an order requiring the corporate debtor to be liquidated in the manner laid down in this Chapter III of the Code. There is no quarrel with the proposition of fact that the period of 180 days or the extended period of 270 days, as the case may be, is mandatory and in case no resolution plan comes, the liquidation order has to be passed.

42. In **“JK Jute Mills Company Limited Vs. M/s Surendra Trading Company”**, **Company Appeal (AT) No.09 of 2017**, the Hon’ble National Company Law Appellate Tribunal held as under:-

“45. Section 12 is a “time limit for completion of insolvency resolution process” which is to be completed within 180 days from the date of admission of the application. An extension of the period of corporate insolvency resolution process can be granted by the Adjudicating Authority, but it cannot exceed 90 days and cannot be granted more than that.

46. The resultant effect of non-completion of insolvency resolution process within the time limit of 180 days + extended period of 90 days i.e. total 270 days will result into initiation of liquidation proceedings under Section 33. As the end result of Resolution Process is approval of resolution plan or initiation of liquidation of proceedings, we hold the time granted under Section 12 of the Code is mandatory.”

43. However, in this case, the liquidation order cannot be passed in view of the stay granted by the Hon’ble High Court vide order dated 21.12.2017 in CWP No.29553 of 2017, which was brought to the

notice of this Tribunal. So the contention that the insolvency resolution process shall come to an end with the expiry of 270 days, is without substance. We are of the view that the proceedings commenced under the Code, once the petition is admitted, it has to be brought to a logical end. When the matter was listed on 17.01.2018 and the stay order passed by the Hon'ble High Court was brought to the notice of this Tribunal, the resolution professional was directed to continue with the resolution process despite the expiry of 270 days. We are very sure that the continuation of the resolution process is only with a view to run the hotel business as such as a going concern and not to take various steps in making fresh advertisements, calling for expression of interest and resolution plan etc. because that period is over being mandatory.

44. It is pertinent to mention that the resolution professional filed CA No.13 of 2018 under Section 60 (5) of the Code stating that a few resolution plans were received majority of which did not meet with the requirement of Code and the terms settled by the Code. It was also stated that two other plans were being examined in which final decision was to be taken in the next meeting.

45. The resolution professional brought to the notice of this Tribunal the stay order passed by the Hon'ble High court in CWP No.29553 of 2017 directing this Tribunal not to pass the final order. It was stated that in the circumstances of the case, the members of COC have granted their consent to the resolution professional to continue to discharge the duties as such. The consent of the members of the COC

dated 08.01.2018 was also attached. Prayer was made that resolution professional may be permitted to continue with the duties.

46. This prayer was opposed by the applicant herein. This Tribunal disposed of the application by order dated 03.04.2018 by observing and holding as under:-

“12. Learned counsel for the objector-promoter director of the suspended Board of Directors vehemently contended that Tribunals are constituted under a special statute and cannot go beyond the powers/limits framed/fixed under that Act. It was further contended that the maximum period permitted under the Code for completion of the resolution process is 180 days as per sub-section (1) of Section 12 of the Code which can be extended for a maximum period of 90 days in terms of sub-section (2) and (3) thereof. In the present case with the extension of 90 days the period of completion of resolution process expired on 23.01.2018 beyond which the Resolution Professional cannot function. It was, therefore, urged that proceeding for resolution process should be kept in abeyance as the Resolution Professional becomes fructuous officio after 270 days.

13. The learned counsel for the objector further submitted that if the Hon'ble High Court has granted the stay in passing of the final order, there was no stay against the Committee of Creditors in either accepting or rejecting the resolution plan already received. Further that there is no provision in the Code or the regulations framed thereunder as to how to bear the expenses of the Resolution Process beyond the period of 270 days.

14. *In the instant case two of the promoter-directors of the suspended Board of Directors of the corporate debtor have challenged the vires of amendment made in the Code debarring the promoter-directors from submitting the resolution plan and the Hon'ble High Court has directed the Tribunal not to pass final order in the matter. After the expiry of maximum period permitted for resolution plan, if no resolution plan is submitted for approval the only consequence is to pass the liquidation order. If there is a stay order passed by the Hon'ble High Court on 21.12.2017 a question may also arise whether the period during which the stay continues to operate can be excluded from the period of 270 permitted days. That issue may, however, arise in case where application is filed for approval of resolution plan or in case where the liquidation order of the corporate debtor is to be passed.*

15. *In any case the objector having himself filed the petition in the Hon'ble High Court challenging the vires the amendment in the Code, it would not lie in his mouth to make such a submission as that may amount to violation of the directions issued by the Hon'ble High Court.*

16. *It would not be appropriate for this Tribunal to keep the resolution process in abeyance as per one of the prayers made on behalf of the objector because the corporate debtor is to run as a going concern till the final order is passed by the Tribunal.*

17. *In view of the above, we find the objections to the prayer made by the Resolution Professional to be also totally without merit and reject the same. Consequently the application filed by the Resolution Professional is accepted*

and it is direct that he shall continue with the resolution process till further orders of this Tribunal.”

47. Now coming to the violation of the moratorium due to the continuation of the proceedings, in which the corporate debtor is a party. One of such matter is CP No.132 (ND)/11, RT No.41/Chd/CHD/2016 in which the order was passed by this Tribunal on 23.10.2017, but the order says that the said case was simply adjourned in the presence of the counsel for the petitioner in the said CP and counsel for one of the respondents. So, there is no prima facie ground to say that the resolution professional committed violation of the moratorium.

48. The learned counsel for the applicant referred to certain orders passed by the DRT, DRAT in the matter of PNB Vs. James Hotel Limited & Ors. Copy of the order dated 11.08.2017 is at Annexure A-4. Some hearing had taken place and the matter was adjourned for 01.09.2017. This order does not shows at all that the resolution professional participated before the DRAT and the same was the state of affairs with the order dated 01.09.2017 passed by the DRAT as at page 88 of the paper book. DRAT observed that a new development has surfaced. The PNB claimed that the owners of the hotel have taken the possession back forcibly on 31.08.2016 after the Bank took over possession thereof on 26.08.2016 in the proceedings under the SARFAESI Act. The DRAT took serious note of the aforesaid fact having not been brought to the notice of the said Tribunal promptly.

49. Along with the written submissions, the learned counsel for the applicant has filed certain documents. Annexure A-1 (Colly) are certain orders passed by DRAT. At page 21 of the written submissions is the order of DRAT dated 25.01.2018. On the said date, there is no representation from the Resolution Professional. Punjab National Bank represented before the DRAT that the moratorium period under the Code has already expired and therefore there was no obstacle now in the way of the Bank from proceedings further with the measures for recovery of the dues of the Bank in accordance with law. DRAT directed for filing of affidavit by General Manager of PNB after bringing this fact to the notice of Executive Director. The matter was adjourned to 06.04.2018. It may be observed here that this Tribunal vide order dated 17.01.2018 had already passed an interim direction in CA No.13 of 2018 filed by the resolution professional, directing him to continue with the resolution process despite expiry of 270 days in view of the stay order passed in CWP No.29553 of 2017 issued by the Hon'ble High Court and the applicant was directed to file the reply. As already observed, the said application was allowed on 03.04.2018 after contest and the resolution professional was directed to continue with the resolution process till further orders.

50. The order of DRAT dated 06.04.2018 is at page 18 of the written submissions. Even on this date, there is no representation from the resolution professional. The DRAT was hearing the parties on the impact of proceedings pending before NCLT. DRAT further felt that some

directions need to be given as the secured creditor was taking steps for ensuring recovery against guarantors at least. The matter was adjourned to 18.04.2018.

51. The order dated 18.04.2018 of the DRAT is at page 16 of the written submissions which shows that there was no representation from the resolution professional for the first time.

52. The next is the order dated 04.05.2018 passed by DRAT at page 15 of the written submissions. The learned counsel for the resolution professional submitted before the DRAT that the resolution professional is not concerned in the appeal in which PNB is primarily seeking exemptions of some strictures passed by DRT against its officials. So, from these documents/orders, there is nothing to support the allegations against the resolution professional.

53. In case the applicant claims that he cannot be proceeded against as guarantor, he may have an independent remedy to file appropriate applications.

54. Further reference is also made to the matters pending in the Hon'ble High Court in CP No.26 of 2013, M/s Totopower Ltd. Vs. James Hotels Ltd. at page 97 of the paper book and the Hon'ble High Court had adjourned the case from 19.05.2017 to 28.08.2017 and the subsequent orders from time to time whereby the said case was being adjourned.

55. We are surprised to note that how the blame is being put on the resolution professional, if those proceedings are going on.

56. With regard to the challenge to various decisions of the COC, that proper voting was not conducted, it may be seen that Haravtar Singh Arora, Director of the Suspended Board of Directors attended most of the meetings. It is not his case that the notice of these meetings were not sent to him. The representative of the financial creditors had also been attending the meetings of the COC and they have not raised any objection to the validity of the meetings. The applicant has no such locus-standi as he can only participate in those meetings. In the 14th meeting of the COC held on 03.05.2018, the COC finally decided that the corporate debtor should be recommended for liquidation and the resolution professional was authorised to take necessary action. It is pertinent to mention here that the resolution professional is sending his regular progress reports to this Tribunal as directed.

57. The other allegations that the resolution professional is not providing proper dresses to the staff of the hotel or that the grocery purchase was made on daily basis, are the questions, which cannot be gone into by this Tribunal. The question about the day-to-day functioning of the corporate debtor cannot be deliberated upon before this Tribunal and for that there is the regulatory authority i.e. IBBI being the proper forum.

58. This is indicated by sub-section (2) of Section 236 of the Code, which says that No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.

59. In this case, we can visualize the volume of work, which the resolution professional has to perform in a hotel business and despite all the odds, he has been able to make huge deposits in the name of the corporate debtor with the Bank. Such an effort by the resolution professional cannot be left un-noticed and rather deserves appreciation.

60. With regard to the challenge to the report of the valuers, there could be a specific prayer in a distinct application, if the same was maintainable, but all these issues basically are within the purview of the COC, which has deliberated upon various aspects of the matter. If some meetings have been called with a short notice that cannot nullify the proceedings.

61. Regulation 19 (1) of the Regulations says that a meeting of COC is to be called by giving not less than seven days' notice in writing to every participant at the address, it has been provided to the resolution professional. Regulation 19 (2) of the Regulations, however, state that the committee may reduce the notice period from seven days for such other period of not less than 24 hours, as it may be deemed fit.

62. In view of the aforesaid discussion, we find no merits in this application. Accordingly CA No.17/2018 stands dismissed.

CA No.176/2018:

This application has been filed by **M/s Kler Hotels Pvt. Ltd.** under Section 60 (5) (c) of the Code for a direction to the resolution professional to provide the Information Memorandum to the applicant for submission of the resolution plan under the provisions of Section 30 of the Code. Apart from this, a prayer is also made for directing the resolution professional to provide any other relevant information that may be required in terms of the aforesaid provisions.

2. It is stated that the applicant company with its associates is interested in submission of the resolution plan on the basis of Information Memorandum to be provided by the resolution professional under Section 29 (2) of the Code and that the applicant is prepared to furnish the necessary undertaking.

3. The applicant company sent an email dated 21.05.2018 to the resolution professional to share the Information Memorandum. Copy of the email is at Annexure-II. The applicant company through its directors also telephonically contacted him on 22.05.2018 and sent a reminder email dated 23.05.2018, but the resolution professional has shown his inability to provide the same. Copy of the email dated 23.05.2018 has been annexed with this application.

4. The application has been opposed by the resolution professional by filing reply, which has been handed over during the course of arguments. The same is taken on record. It is stated that after the admission of the petition under Section 7 of the Code and

appointment of interim resolution professional, two advertisements were issued on 14.08.2017 and 05.10.2017 calling the expression of interest from the prospective investors. Copies of the said newspaper items are attached as Annexure R-1 with the reply. As per the advertisement at page 8 of the application published in the newspaper, the expression of interest could be submitted on or before 22.08.2017 and as per the second advertisement at page 7 of the application, the expression of interest could be submitted by 14.10.2017. The applicant did not submit any expression of interest within the time granted nor any such cause has been furnished in the instant application. It is further stated that the COC in the 14th meeting has already referred the matter for liquidation and the resolution process has been brought to close in so far as the COC is concerned.

5. The other allegation in the reply is that the applicant has shown his willingness to furnish the resolution plan **along with his associates** and therefore, it is not feasible that the applicant shall keep the Information Memorandum confidential which is the essential requirement.

6. We have heard the learned counsel for the applicant and learned counsel for the resolution professional and perused the record quite carefully for disposal of this application.

7. The learned counsel for the applicant vehemently contended that the timelines provided in the Code for various acts should not be considered mandatory as the liquidation order has yet not been

passed despite the expiry of 270 days in view of the order dated 21.12.2017 by the Hon'ble High Court in CWP No.29553 of 2017, which is still pending.

8. The learned counsel for the applicant referred to the case law in order to contend that the provisions of the Code and the Regulations framed thereunder relating to the timeline should not be considered mandatory in the circumstances of the case. However, we have already referred to the judgment of Hon'ble National Company Appellate Tribunal in “**JK Jute Mills Company Limited (supra)**” that the period of 180 days and 270 days as provided in Section 12 of the Code is mandatory. However, we are unable to agree to the above contention as the applicant did not submit the Expression of Interest in response to the advertisements. The period of 270 days expired in the month of January, 2018, but the applicant had made an attempt to seek copy of the Information Memorandum in the third week of May, 2018. There is no reason to give an opportunity to the applicant for a permission to submit the resolution plan now at such a belated stage simply because the liquidation order could not be passed because of the stay granted by the Hon'ble High Court. It cannot be accepted that the resolution process can start afresh for inviting the Expression of Interest and calling for the resolution plan, when the time period for all these compliances has expired long ago. The resolution professional has been simply directed to continue with the resolution process in view of the order of the Hon'ble

High court and that apparently was to keep the business of the corporate debtor as a going concern.

9. Under Regulation 39 of the Regulations, the resolution applicant has to submit the resolution plan(s) prepared in accordance with the Code and the Regulations to the resolution professional within the time given in the advertisement made under clause (h) of sub-section (2) of Section 25 of the Code. After the resolution plan is approved by the Committee of Creditors, the resolution professional has to submit the plan to the Adjudicating Authority under regulation 39 (4) of the Regulations.

10. Though in certain circumstances, the timelines provided in the Code could be extended, but only taking into consideration the relevant facts that certain applications are pending before the Tribunal for consideration due to which it delayed the conclusion of the proceedings within the time, but permitting any person to have the Information Memorandum now with a view to submit the resolution plan that too after the COC has taken the decision that the corporate debtor should be liquidated, cannot be permissible. This would open a Pandora box for restarting the entire process of making fresh advertisement permitting different people even other than the applicant to submit Expression of Interest and to submit the plan.

11. **“Dalchand Versus Municipal Corporation, Bhopal and another, (1984) 2 Supreme Court Cases, 486** referred to by learned counsel for the applicant was a matter before the Honble Supreme Court

in which the question was whether the failure to supply a copy of the report of the Public Analyst within the period of 10 days stipulated by Rule 9 (j) of the Prevention of Food Adulteration Act was fatal to the prosecution. In that case, the Hon'ble Supreme Court held that where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It was also held that every prescription of a period within which an act must be done, is not the prescription of a period of limitation with painful consequences if the act is not done within that period. So the facts of that case are clearly distinguishable and not helpful to the applicant.

12. The judgment reported in **“Chief Settlement Commissioner, (Rural) Punjab and another Versus Ram Singh and others”, (1987) 1 Supreme Court Cases 612**, was under the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 with regard to the sale of the excess area of the land allotted by mistake, in possession of the proposed allottee. The Hon'ble Supreme Court held in that case that an interpretation which would defeat the benign purpose to compensate those who have suffered on account of partition, but would result in rewarding those who have gained undue advantage by mistake or otherwise and placing a premium on such mistakes, cannot be countenanced. In that case, the question was whether word 'may' in rule

73 (2) (ii) in the aforesaid Rules should be considered as 'shall' to make it binding upon the Chief Settlement Commissioner to allot the area of the excess land to the person in possession, who was earlier allotted the land by mistake. From the peculiar facts of the said case, this judgment will also not support the petitioner.

In the present case, there is nothing to suggest that the period prescribed for the insolvency resolution process under Section 12 of the Code as 180 days and 270 days, which has been held as mandatory by the Hon'ble National Company Law Appellate Tribunal should be considered as not mandatory simply because the liquidation order has not been passed on account of the stay order passed by the Hon'ble High Court. We cannot observe the mandate of law particularly in view of the object for which Section 12 of the Code has been enacted as directory to enable the applicant to now submit the resolution plan.

In view of the aforesaid discussion, we find no merits in this application. Accordingly, CA No.176/2018 is dismissed.

CA No.117/2018:

Adjourned to 23.08.2018 to be listed along with CA No.270/2018.

Sd/-

(Pradeep R.Sethi)
Member (Technical)

Sd/-

(Justice R.P.Nagrath)
Member (Judicial)

August 08, 2018.
Ashwani