

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

**Company Appeal (AT) (Insolvency) No.552 of 2023**

**IN THE MATTER OF:**

**Pelican Grand Motels Pvt. Ltd.**

**...Appellant**

**Versus**

**Punjab National Bank**

**...Respondent**

**Present:**

**For Appellant: Mr. Abhishek Gwain, Advocate.**

**For Respondent: Mr. S. K. Sharma, Ms. Dyuti Ghai, Advocates.**

**ORDER**

**30.05.2023:** Heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent. This Appeal has been filed against the order dated 28.02.2023 by which order the Adjudicating Authority has admitted the Section 7 application filed by the Financial Creditor.

2. Application under Section 7 was filed by the Punjab National Bank in which the Adjudicating Authority passed an order on 06.01.2023 closing the right of the Appellant to file reply and the orders were reserved. The order passed on 06.01.2023 is as follows:

**“ORDER**

*Today, when the matter was heard, Mr. S.K. Sharma, Ld. Counsel for the petitioner and Mr. Abhishek Gusain, Ld. Counsel for the respondent appeared. Notice was issued to the respondent on 17.10.2022. After service, it appears that the*

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*respondent has filed reply and served it on the petitioner's counsel but the copy of the same has not been filed before the NCLT and when the query was raised to the counsel as to whether there is a date on which the reply was filed to the section 7 petition, he is unable to give a date or proof of the same to NCLT.*

*Ld. Counsel for the respondent informed us that the reply has been filed vide diary No. 0710102074302022 on 29.11.2022. We find from the DMS that it is still continues under scrutiny and the respondent has not chosen to rectify the defects so as to bring it on record. This shows the callous attitude on the part of the CD, as he is not defending the case hence we have no other option except to close the right of filing reply.*

*Arguments heard. Order reserved.”*

3. The Appellant was advised to file a Writ Petition under Article 226 before the High Court. The High Court in the Writ Petition No. 2281/2023 and CM Application No. 8267/2023 filed by the Appellant passed an order on 22.02.2023. Para 14 of the order of the High Court is as follows:

*“14. Consequences of any order passed under section 7 of the IBC can be quite far reaching for any company. Accordingly, in the opinion of this Court, the Petitioner deserves an opportunity to defend its position. In the overall facts and circumstances of these case, it is directed as under.*

- i. *The Petitioner's reply, which has been filed on 29th November, 2022, shall be placed on record before the NCLT which shall take up the matter for hearing on 15th March, 2023.*
- ii. *The Petitioner shall be given opportunity to make its submissions in respect of the petition under Section 7 of the IBC. Thereafter, the NCLT may proceed to pass orders in accordance with law.*
- iii. *The present order shall be communicated by the Registrar General to the Registrar, NCLT in order to ensure that the Petitioner's interests are not adversely affected, due to any delay in communication.”*

4. The order of the High Court was sent by the Registry of the High Court, which order of the High Court was not before the Adjudicating Authority when matter was heard on 28.02.2023. It appears that the order was subsequently received by the Adjudicating Authority and thereafter the Adjudicating Authority fixed date in the matter as 15.03.2023. We have been informed that the said date has also been adjourned to 29.08.2023.

5. Learned counsel for the Appellant submits that when reply was filed by the Appellant, copy of it was also received by the Financial Creditor and the Financial Creditor has also filed rejoinder affidavit, the Adjudicating Authority ought to have considered the reply specially when the High Court has passed order on 22.02.2023.

6. Learned counsel for the Respondent submits that the order of the High Court was not even before the Adjudicating Authority when order was passed on 28.02.2023, therefore, there is no error in the order admitting application under Section 7.

7. We have considered the submissions of learned counsel for the parties and perused the record.

8. From the sequence of events which has been brought on the record it does appear that reply was filed by the Corporate Debtor on 29.11.2022 which continued to be under scrutiny as per DMS, as noted in order dated 06.01.2023. Learned counsel for the Appellant submits that there are certain minor defects in the reply which Appellant was always ready to rectify. It is submitted that the High Court has passed the order on 22.02.2023 when the Appellant directly approached the High Court in a Writ Petition. Their being statutory need, the Appellant should have filed appeal, if any, against the order dated 06.01.2023 of the Adjudicating Authority, before this Tribunal.

9. Looking into the fact and circumstance of the present case, we are of the view that ends of justice be served in directing the Adjudicating Authority to consider the reply which was filed by the Appellant on 29.11.2022, especially when the Financial Creditor has already filed it rejoinder. The Adjudicating Authority passed the impugned order without taking into consideration the reply which has already filed on 29.11.2022 but laying in defect.

10. Learned counsel for the Appellant undertakes before us that defects shall be cured within two weeks from today.

11. The reply and rejoinder being already on the record, ends of justice be served in setting aside order dated 28.02.2023 and reviving Section 7 application before the Adjudicating Authority to be heard afresh taking into consideration the reply as well as rejoinder filed by the Financial Creditor. Let a copy of this order be produced before the Adjudicating Authority by the Appellant within one week from today. Within a further period of two weeks' defects shall be cured by the Appellant, as undertaken. Let the Section 7 application be listed before the Adjudicating Authority on 03.07.2023, on which date the Adjudicating Authority may consider the application as well as reply and rejoinder and take decision in accordance with law, as early as possible. Appeal is allowed to the extent indicated above.

**[Justice Ashok Bhushan]  
Chairperson**

**[Naresh Salecha]  
Member (Technical)**

*Archana/nn*