

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI

SPECIAL BENCH

(IB)-109 (PB)/2017

IN THE MATTER OF:

Tata Capital Financial Services Limited

.....PETITIONER

Vs.

Svogi Oil Gas & Energy Limited

..... RESPONDENT

SECTION :

Under Section 7 of Insolvency  
& Bankruptcy Code, 2016

Order delivered on 07.7.2017

Coram :

R. VARADHARAJAN,  
Hon'ble Member (Judicial)

DEEPA KRISHAN,  
Hon'ble member (Technical)

For the Petitioner

: Mr. Raktim Gogoi, Advocate  
Ms. Simran Brar, Advocate  
Mr. Parinay, T.Vasandani, Advocate  
Ms. Medhavi Singh, Advocate.. For Financial  
Creditor

For the Respondent

: Mr. Sumesh Dhawan, Advocate

ORDER

Learned Counsel for the petitioner is present. It is represented by the Learned Counsel for the petitioner that already a detailed list in relation to the winding up petition filed before the Hon'ble High Court of Delhi against the

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Corporate Debtor i.e. M/s. Svogi Oil Gas Company and Energy Limited has been placed which has also been incorporated in the previous order.

Ld. Counsel for the petitioner also brings to notice the Notification dated 29.6.2017, recently issued by the Ministry of Corporate Affairs, New Delhi, titled as Companies (Transfer and Pending Proceedings), 2<sup>nd</sup> amendment, 2017 which contemplates that even in the case of winding up petition pending before the High Courts and in which service has not been effected and against the same respondent company where service has been effected and thereby retained on the ground of inability to pay the debts, then both the petitions are required to be retained before the concerned High Court itself.

However, perusal of the above Notification shows that strictly it may not be applicable to the petitioner as the petition before us has not been transferred from the Hon'ble High Court to this Tribunal by virtue of the provisions of IBC having been brought into force and by virtue of Companies (Transfer of Pending Proceedings) Rules, 2016 but on the other hand has been filed as a new petition before this Tribunal under the provisions of IBC. However, there is a decision of Special Bench of this NCLT passed in M/s. Newfloats Technologies Pvt. Ltd. Vs. M/s. Getit infoservices Pvt. Ltd. in CA No.(IB) 45(PB)/2017 wherein a view has already taken while dismissing the petition against a Corporate Debtor in relation to whom already there are pending proceedings before the Hon'ble High Court and it will be in fitness of things that in order to avoid collision between the two Procedures, one relating to insolvency and the other relating to winding up, the proceedings relating to winding up be preferred being that in earlier point of time. However, as compared to the said matter, a distinction can be drawn herein

as in the winding up petition against the Corporate Debtor, the

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Hon'ble High Court has <sup>not only</sup> thought it fit to be admitted ~~but~~ in addition had also thought it fit to appoint the Official Liquidator as a provisional Liquidator to take over the assets of the Company by virtue of Section 450 of the Companies Act, 1956. In the present instance, it is not clear whether any provisional Liquidator has been appointed in the ten Company Petitions which have been listed in the order passed by the Hon'ble Principal Bench on 25.5.2017, based on the information provided by the Counsel for the parties.

Hence, taking into consideration the above, the Counsel for the petitioner is directed to ascertain and inform to this Tribunal whether in any of the ten matters listed, vide order dated 25.5.2017 and pending before the Hon'ble Court, New Delhi as to whether any Liquidator has been appointed or not ?

Post the matter on 20.7.2017.

  
(DEEPA KRISHAN)  
MEMBER (TECHNICAL)

  
(R. VARADHARAJAN)  
MEMBER (JUDICIAL)

Surjit  
07.7.2017