

**National Company Law Tribunal**

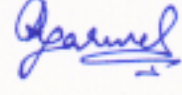
**Allahabad Bench**

CP NO. (IB)/127/ALD/2017  
CA No. 06/2018

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.01.2018

NAME OF THE COMPANY: JBB Enterprises vs YMS Mobitech Pvt. Ltd.

SECTION OF THE COMPANIES ACT: U/S Insolvency Code, 2016.

<u>Sl. NO.</u>	<u>Name</u>	<u>Designation</u>	<u>Representation</u>	<u>Signature</u>
<u>1.</u>	Amitabh Agarwal	Advocate	Applicant R.P.	
<u>2.</u>				

**CP No. (IB) 127/ALD/2017, CA No.06/2018**

Sri Amitabh Agarwal for the petitioner-RD.

The present petition is filed on behalf of the Resolution Professional Sri Prabhajit Singh Soni, being an appointee of this court in respect of Corporate Debtor Company. He through the Present petition put forth his grievance stating that while discharging his lawful duty as assigned to him under the I & B Code, 2016, he is facing some embarrassment from the local police Authorities of the Gautam Buddha Nagar, Noida, U.P. As well as from the local police Authorities, Jaipur in Rajasthan relating to some alleged F.I.R. lodged against the Directors of the Corporate Debtor Company alleging non-payment of dues of complainants.

Be it may so, it is now a settled legal position that once the moratorium under section 13 & 14 of the I & B Code is declared in respect a Corporate Debtor Company other proceeding filed against it is not legally expected to be continued with and deemed to be stayed during such period of moratorium is inforce. However, as to whether the proceedings with relation to some criminal enquiry/ investigation etc. can be allowed to be continued or otherwise is a debatable issue.

As per the matter placed before us and available on record, it may be seen that a Director (of suspended management) of the Corporate Debtor Company approached Hon'ble High Court of Allahabad by filing Criminal Misc. Writ Petition, wherein some interim order has been passed on 22/12/2017 by the Hon'ble High Court by granting some interim relief to the petitioner. Now the grievance of the R.P. before this



court is that despite this, the Investigating Officer/s and other unsecured creditor are creating undue pressure on him as well as on the COC to get released of their payments, irrespective of norms as set out in the I & B Code for Corporate Insolvency Resolution Process in respect of Corporate Debtor Company.

Therefore, the petitioner has made such prayer seeking for some direction from this court for stay of the Criminal enquiry/ proceeding filed against the Corporate Debtor Company and the R.P. till the moratorium as declared by this court under section 14 of the I.B. Code is inforce.

We have heard at length the submission of the learned counsel for the petitioner Sri Amitabh Agarwal.

We feel, the Present case may have far reaching effect on a Corporate Insolvency Resolution Process as well as smooth functioning of the Resolutional Professional and the COC ( Committee of Creditors) of the Corporate Debtor Company as well as pm smooth functioning of COC and R.P. of a Corporate Debtor Company, because the R.P. being an appointee of this court under the provision of the I & B Code to be treated as an Officer of this Court and deemed public servant in order to discharge his duties properly, so as to complete the CIRP within prescribed time limit and which is the mandate of the Code. Hence, he cannot be expected to face such kind of hindrance from local Police/ Administration Authorities. As, because the time is essence of the present I & B Code. Hence, he as well as the COC ( Committee of Creditors) equally needs protection from the State Govt. authorities to complete their Law full duties.

It would be not out of context to mention here that the Hon'ble Supreme Court in the matter of *Alchemist Asset Reconstruction Company Limited Vs. M/s Hotel Gaudavan Pvt. Ltd. & Ors.* came to an occasion to view seriously about running a parallel proceeding during continuance of a such moratorium period and pleased to quash such (Criminal) proceedings, which is also important and equally relevant in the present proceedings for the sake of convenience, the relevant portion of the Supreme Court judgement is being reproduced here in below;

- 3) *The Facts of the present case disclose a very sorry state of affairs.* *Several proceedings had been taken and*



*ultimately a petition filed under the Insolvency and Bankruptcy Code, 2016 was admitted on 31.03.2017 by the National Company Law Tribunal, Principal Bench, New Delhi. As a result, the moratorium that is imposed by Section 14 came into effect on that date and Respondent No.3 has been appointed as the Interim Resolution Professional (IRP).*

- 5) *The mandate of the new Insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under section 14(1) (a) expressly interdicts institution or continuation of pending suits of proceedings against Corporate Debtors.*
- 6) *This being the case, we are surprised that an arbitration proceeding has been purported to be stated after the imposition of the said moratorium and appeals under section 37 of the Arbitration Act are being entertained. Therefore, we set aside the order of the District Judge dated 06.07.2017 and further state that the effect of section 14(1) (a) is that the arbitration that has been instituted after the aforesaid moratorium is nonest in law.*
- 7) *Mr. Jayant Bhushan, learned Senior Counsel, also informs us that criminal proceeding being FIR No. 0605 dated 06.08.2017 has been taken in a desperate attempt to see that the IRP does not continue with the proceedings under the Insolvency Code which are strictly time bound. We quash this proceeding.*
- 8) *As a result, the appeal is allowed and the steps that have to be taken under the Insolvency Code will continue unimpeded by any order of any other court.”*

In the light of the above stated precedent of the Hon'ble Supreme Court and by considering the provision of the I&B Code readwith sections 446 of the Companies Act, 2013, we feel appropriate to issue a formal notice to the State Govt. of U.P. & and the State Govt. of Rajasthan



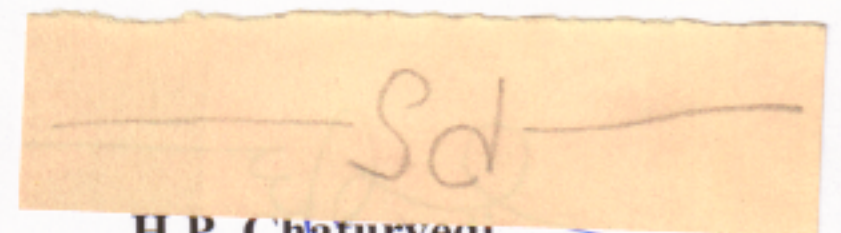
through its Home Secretary as well as to other Respondents in the present matter for filing reply to the present petition.

Further, Registry of this Bench as well as petitioner is hereby directed to communicate a copy of this order along with a copy of the present petition to the office of learned Advocate General of State of U.P. at his office at High Court at Allahabad and also the learned Advocate General of the State of Rajasthan at his office at Jodhpur/Jaipur Benches of Hon'ble Rajasthan High Court with such a request to clarify the stand of the State Govt. in the present matter and further to nominate a counsel to assist this court.

The matter to be listed on 8<sup>th</sup> Feb., 2018.

Date: 22/01/2018

*Typed by*  
*Jyoti*  
*(Stenographer)*



**H.P. Chaturvedi,**  
**Member(Judicial)**