
**Alchemist Asset Reconstruction Company Ltd Vs M/s. Hotel Gaudavan Pvt.
Ltd. & Ors**

CIVIL APPEAL No. 16929 of 2017, (Arising out of S L P Â© No 18195 of 2017

Court: SUPREME COURT OF INDIA

Date of Decision: Oct. 23, 2017

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 37](#), [Section 14 \(1\)\(a\)](#) - Appealable orders -
Failure or impossibility to act

Citation: AIR 2017 SC 5124 : 2017 AIR(SCW) 5124 : (2018) 16 SCC 94 : (2017) 4
LawHerald(SC) 2590

Hon'ble Judges: Rohinton Fali Nariman, J; Sanjay Kishan Kaul, J

Bench: Division Bench

Advocate: Sidhartha Luthra, Rahul Pratap, Abhirup Das Gupta, Swati Sharma, Manmayi
Sharma, Jayant Bhushan, Anushree Prashit Kapadia, Suvidutt M.S, Ashu Kansal

Final Decision: Allowed

Judgement

1. Leave granted.

2. Heard the learned Senior Counsel/Counsel appearing for the parties.

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). A Writ Petition was filed against this order, which was admitted only to the extent of the challenge to the vires of the

Insolvency Code, is pending. A Special Leave Petition against this order was dismissed on 26.04.2017. Meanwhile, despite the moratorium, a

letter was issued by Respondent No.1 to Respondent No.2 invoking the arbitration clause between the parties and Shri Pankaj Garg, an

Advocate, was appointed as Sole Arbitrator. Shri Garg entered upon the reference. In an other order dated 31.05.2017, the National Company

Law Tribunal, Principal Bench, New Delhi referred to Section 14 (1)(a) of the Insolvency Code and stated that given the moratorium that is

imposed, no arbitration proceedings could go on. A notice was issued on 29.06.2017 by the National Company Law Tribunal, Principal Bench,

New Delhi in C.A. No. 186(PB) of 2017.

4. A First Appeal was filed before the District Judge, Jaisalmer, Rajasthan under section 37 of the Arbitration and Conciliation Act, 1996 and by

the impugned order dated 06.07.2017, the appeal was asked to be registered and notice was issued awaiting a reply.

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 or proceedings against Corporate Debtors.

6. This being the case, we are surprised that an arbitration proceeding has been purported to be started 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 non

est in law.

7. Mr. Jayant Bhushan, learned Senior Counsel, also informs us that criminal proceeding being F.I.R. 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.