

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) Nos. 32 & 50 of 2018

(arising out of order dated 8th January, 2018 passed by National Company Law Tribunal, New Delhi Bench in C.A. No. 233(PB)/2017 IN C.P. No. (IB)-84(PB)/2017)

IN THE MATTER OF:

Randhiraj Thakur
Director,
Mayfair Capital Private Limited
Registered office at
C-41, Mayfair Garden,
New Delhi – 110 016

...Appellant

Versus

1. M/s. Jindal Saxena Financial Services
Private Limited ,
Shop No. 243, North – Ex Mall,
Sector – 9, Rohini,
New Delhi – 110 085

2. Mayfair Capital Private Limited
Registered office at
C-41, Mayfair Garden,
New Delhi – 110 016.

...Respondents

Present:

For Appellant : **Mr. Abhinav Vashisht, Senior Advocate assisted by**
Ms. Gauri Rishi and Ms. Srishti Juneja, Advocates

For 1st Respondent: **Mr. Tushar Parashar, Advocate**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by the appellant seeking, *inter-alia*, setting aside the order dated 8th January, 2018 passed by the Adjudicating Authority (National Company law Tribunal), New Delhi whereby and whereunder the application for recall preferred by the appellant is rejected. Further prayer has been made to set aside the order dated 27th June, 2017 passed by the Adjudicating Authority in Company Petition No. (IB)-84 (PB)/2017 whereby the application preferred by the 1st Respondent (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') has been admitted.

2. One of the ground taken by the appellant is that the original order was passed by the Adjudicating Authority without issuing notice to the 'Corporate Debtor'.

3. According to the learned counsel for the appellant 'M/s. Mayfair Capital Pvt. Ltd.' is a 'financial service provider' as defined in Section 3(17) of the I&B Code. It was granted certificate of registration on 16th March, 2012 under Section 45-IA of the Reserve Bank of India Act, 1934 to 'M/s. Mayfair Capital Pvt. Ltd.'. Being a 'Financial Sector Regulator' as defined in Section 3(18) of the I&B Code and having status of a 'non-banking financial institution', the application under Section 7 of the I&B Code was not maintainable.

4. From the record, it appears that a 'certificate of registration' has been granted by the Reserve Bank of India (RBI) to 'M/s. Mayfair Capital Pvt. Ltd.' to

commence and carry on the business of non-banking financial institution; which show that 'M/s. Mayfair Capital Pvt. Ltd.' renders 'financial service' as defined in Section 3(16), which reads as under:

“3. In this Code, unless the context otherwise requires,—

(16) "financial service" includes any of the following services, namely:—

- (a) accepting of deposits;*
- (b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;*
- (c) effecting contracts of insurance;*
- (d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;*
- (e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—*
 - (i) buying, selling, or subscribing to, a financial product;*
 - (ii) availing a financial service; or*

- (iii) *exercising any right associated with a financial product or financial service;*
- (f) *establishing or operating an investment scheme;*
- (g) *maintaining or transferring records of ownership of a financial product;*
- (h) *underwriting the issuance or subscription of a financial product; or*
- (i) *selling, providing, or issuing stored value or payment instruments or providing payment services;”*

5. Sub-section (17) of Section 3 of the I&B Code defines ‘financial service provider’ as under:

“3. *In this Code, unless the context otherwise requires,—*

- (17) *"financial service provider" means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator;*

6. Sub-section (18) of Section 3 of the I&B Code defines the ‘financial sector regulator’ as under:

“3. In this Code, unless the context otherwise requires,—

(18) "financial sector regulator" means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government;”

7. As per the ‘Memorandum of Association’ of ‘M/s. Mayfair Capital Pvt. Ltd.’, the main object, *inter-alia*, includes carrying on the business of an investment company to carry on all types of financial operations and all types of financial services including housing finance, consumer finance and industrial finance etc. The aforesaid facts have not been disputed by 1st Respondent.

8. Learned counsel for the appellant submitted that ‘M/s. Mayfair Capital Pvt. Ltd.’ do not come within the definition of ‘corporate person’ as defined in sub-section (7) of Section 3 of the I&B Code in view of exception carved out therein, therefore, cannot be treated to be a ‘Corporate Debtor’ within the

meaning of sub-section (8) of section 3 of the I&B Code. Sub-section (7) and (8) of Section 3 as referred above are quoted hereunder for ready reference:

“3. *In this Code, unless the context otherwise requires,—*

(7) *"corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;*

(emphasis added)

(8) *"corporate debtor" means a corporate person who owes a debt to any person;*

9. In the present case, we find that an ‘Inter Corporate Deposit Agreement’ was reached between ‘M/s. Jindal Saxena financial Services Private Limited’ (1st Respondent) and ‘M/s. Mayfair Capital Pvt. Ltd.’ (2nd Respondent) which is a non-banking financial company. ‘M/s. Mayfair Capital Pvt. Ltd.’ had undertaken a ‘financial services’ by accepting deposit from ‘M/s. Jindal Saxena financial Services Private Limited’ (1st Respondent) in terms of Section 3(16) of

the I&B Code. Therefore, it cannot be held that the amount was accepted towards public deposits. For the said reason, in regard to transaction, in quest, 'M/s. Mayfair Capital Pvt. Ltd.' cannot be treated to be 'Corporate Debtor'. 'M/s. Mayfair Capital Pvt. Ltd.' (2nd Respondent) being a 'financial service provider' and having excluded from the definition of 'corporate person' under sub-section (7) of Section 3 of the I&B Code the application under Section 7 was not maintainable against 'M/s. Mayfair Capital Pvt. Ltd.'

10. If the entire scheme of the I&B Code is seen, it will be evident that the Code is to consolidate and amend the laws relating to reorganisation and insolvency resolution of 'corporate persons', 'partnership firms' and 'individual' in a time bound manner. It is a self-contained Code which is exhaustive in nature when it comes to reorganisation and insolvency resolution. However, an exception had been carved out while enacting the Code that the 'financial service providers' have been kept outside the purview of the Code. Being a consolidating legislation only those acts are permitted which are mentioned in the Code and it cannot be made applicable to 'financial service providers' including 'non-banking financial institutions' and MFI's banks, which have been kept outside the purview of the Code.

11. The Adjudicating Authority has failed to notice the aforesaid provisions and passed the impugned order dated 8th January, 2018 initiating 'insolvency corporate resolution process' against 'M/s. Mayfair Capital Pvt. Ltd.', a 'financial service provider' (non-banking financial company).

12. As the appellant was not a party before the Adjudicating Authority and the order was passed without notice to 'M/s. Mayfair Capital Pvt. Ltd.' (2nd Respondent), which has not been disputed by the 1st respondent and the appeal has been preferred immediately after the impugned order, this appeal cannot be dismissed on the ground of limitation having filed immediately when the appellant came to know the same. The impugned order having passed against the 'financial service provider' (non-financial company), is fit to be set aside. Accordingly, we set aside the impugned order dated 8th January, 2018 passed by the Adjudicating Authority.

13. In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the 1st Respondent under Section 7 of the I&B Code is dismissed. The Adjudicating Authority will now close the proceeding. The 2nd Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

14. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and 'Mayfair Capital Private Limited' (2nd Respondent) will pay the fees for the period he has functioned. The appeal is allowed with aforesaid

observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

New Delhi

18th September, 2018.

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