

# JAMES HOTELS LIMITED

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Dated: 07.11.2017

To  
**BOMBAY STOCK EXCHANGE LIMITED**  
PHIROZE JEEJEEBHOY TOWERS,  
DALAL STREET MUMBAI-400001

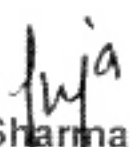
**Sub : Intimation regarding the extension of AGM by Hon'ble NCLT.**

Sir

This is to inform that an application had been filed by RP Mr. Navneet Gupta with Hon'ble NCLT for extension of AGM by three months from the due date of convening AGM, which has been approved by the Hon'ble NCLT, Chandigarh Bench vide its Order dated 26.10.2017 (copy attached).

This is for your information and record.

Thanking You  
For James Hotels Limited

  
Puja Sharma  
(Company Secretary)  
ACS - 30298

**In the National Company Law Tribunal,  
Chandigarh Bench, Chandigarh  
(Exercising the powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CA No.164/2017  
IN  
CP (IB) No.15/Chd/CHD/2017**

**Under Section 60 of the  
Insolvency & Bankruptcy Code,  
2016 for extension of time for  
holding AGM.**

In the matter of:

Punjab National Bank. ....Petitioner/Financial Creditor.

Versus.

M/s James Hotels Ltd. ....Corporate Debtor.

**Order delivered on 26.10.2017.**

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL).**

For the Applicant/Resolution Professional: Mr.Yogesh Goel, Advocate

For Mr.Vikas Garg Shareholder: Mr.Atul V. Sood, Advocate

For Registrar of Companies, Chandigarh: Dr.Raj Singh, Registrar of Companies, Chandigarh, Punjab and HP.

**ORDER (ORAL)**

The Resolution Professional Navneet Gupta has filed this application for extension of time for holding of the Annual General Meeting (for short AGM) of the company, which is undergoing the insolvency resolution process.

2. CP (IB) No.15/Chd/CHD/2017 filed by Punjab National Bank as Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code') against the Corporate Debtor was admitted by this Tribunal on 27.04.2017 and applicant Navneet Gupta was appointed as the Interim Resolution Professional vide order dated 08.05.2017. He was later on appointed as Resolution Professional in the first meeting of the committee of creditors held on 29.05.2017.

3. It is admitted during the course of arguments that due date of AGM was 30.09.2017. It is stated that the applicant started collecting and collating information about the financial condition of the Corporate Debtor. The process took some time due to scattered nature of the transactions. The resolution process has been made further complicated by the un-cooperative attitude of the suspended board of directors as the complete information was not provided despite repeated reminders. The suspended board of directors also filed cases against the applicant, which he had to defend. One of the shareholders also filed miscellaneous application before the Adjudicating Authority, which was also defended and thus, consumed time of the resolution professional.

4. It is further stated that conducting of AGM is a tedious process there being 3500 shareholders of the company. Number of reports regarding the functioning of the company have to be prepared to be served upon each of the shareholders. It was because of the circumstances explained above that the applicant could not prepare the information memorandum.

5. Keeping in view the above circumstances, the applicant applied to the Registrar of Companies for seeking further time to hold AGM, but that was dismissed vide order dated 14.09.2017, copy of which is attached as Annexure A-1.

6. It is stated that the order passed by the Registrar of Companies is without application of mind or affording any opportunity of hearing. The matter regarding holding of the AGM was raised in the meeting of the committee of creditors held on 19.09.2017 and the above difficulty was brought to the notice of the committee. It was resolved that an application should be filed before the Tribunal for seeking extension of time for holding AGM. The minutes of the meeting of the committee of creditors dated 19.09.2017 is at Annexure A-2, where this issue was discussed at item No.4.7.

7. Notice of this application was issued to the Registrar of Companies. No reply to the application has been filed, but the application is opposed. Mr.Atul V. Sood, Advocate opposed the application, who represents Vikas Garg, a shareholder but no intervention application has been filed.

8. I have heard the learned counsel for the applicant, Registrar of Companies and Mr.Atul V. Sood, counsel for Vikas Garg shareholder.

9. Mr.Atul V. Sood submitted that he has no problem with the extension of time, but the procedure adopted by the applicant for approaching the Adjudicating Authority instead of filing an appropriate

application before the National Company Law Tribunal under the Companies Act, 2013 should not be accepted. Mr.Sood would refer to the observations of this Adjudicating Authority in the order dated 12.09.2017 while disposing of CA No.95 of 2017 filed by Vikas Garg a shareholder for seeking information relating to the board meeting of the company dated 24.04.2017; extract of the ledger and cash book showing the expenditure on despatch of notices to the directors of the company; other expenditure regarding Board Meeting shown to be held on 24.04.2017 and filing of e-form DIR-12 on 22.05.2017 and other record. Mr.Vikas Garg had also made a request for direction to the Resolution Professional to dig out the fraud committed by the directors/promoters, key personnel and managers of the Corporate Debtor.

10. Specific reference was made to paragraph 15 of the order dated 12.09.2017 whereby the prayer made by Vikas Garg was rejected. It is reproduced as under:-

*“ The task of the Resolution Professional is cumbersome and quite lengthy and he is supposed to be involved in completion of the resolution process within the aforesaid time. The Resolution Professional is sending the progress reports regularly to the Tribunal/Adjudicating Authority. The progress report dated 30.06.2017 filed by the Resolution Professional clearly makes mention of the appointment of two valuers. The list of registered valuers was received from the Punjab National Bank as per the copy of the Minutes of the Meeting held on 26.05.2017 sent by the Resolution Professional. I am further of the view that if any member of the suspended Board of Directors has committed any act which may be illegal that cannot be*

*subject to proceedings under the Code, but under the Companies Act, 2013. The Resolution Professional is not an investigator but he is to provide relevant information as required from him in accordance with provisions of the Code, rules and regulations framed thereunder. The IB Code is a complete code in itself and such an interference at the instance of a member would be an obstacle in the duties of the Resolution Professional. He has to hold regular meetings of Committee of Creditors for taking further steps and submit before them the Information Memorandum.”*

11. It was also observed in the order dated 12.09.2017 as under:-

*“This application has been filed under Rule 11 of the NCLT Rules, 2016 for exercising the inherent powers of the Tribunal. However, the learned counsel for the Applicant has not been able to show that this Rule has been extended to the provisions of the Code. Under Rule 10 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provide only certain Rules of NCLT Rules, 2016 applicable to the procedures and it reads as under:*

*“Filing of application and application fee. – (1) Till such time the rules of procedure for conduct of proceedings under the Code are notified, the application made under sub-section (1) of section 7, sub-section (1) of section 9 of or sub-section (1) of section 10 of the Code shall be filed before the Adjudicating Authority in accordance with rules 20, 21, 22, 23,24 and 26 of Part III of the National Company Law Tribunal Rules, 2016”.*

*This alone would be sufficient reason to reject the prayer of the applicant.”*

12. The observations made in the above order do not support the contention raised by Mr.Sood, Advocate.

13. The Registrar of Companies submitted that no reasons were given by the Resolution Professional in the application for seeking extension of time for holding AGM. It is submitted that it was only a one line application. In any case, the ROC submitted during arguments that there is a huge amount of fee, which the Company has defaulted in depositing in the office of ROC due to increase of the capital from ₹14 crores to ₹52 crores in the year 2011 and in case, the amount of fee is paid, the ROC may not have difficulty in extending the period of time for holding AGM, if fresh application is filed on such deposit.

14. I am of the view that such an argument cannot be sustained because of the declaration of moratorium in terms of Section 14 of the Code as ordered on 27.04.2017 at the time of admission of petition under Section 7 of the Code.

15. The ROC further contended that the remedy to the applicant against the order passed by the ROC under Section 96 of the Companies Act, 2013 is not to approach the Adjudicating Authority, but elsewhere. Further, the applicant has to mention the special reasons in the application for extension of time as required by 3<sup>rd</sup> proviso to Section 96 of the Companies Act, 2013.

16. Attention was drawn to the provisions of Section 97 of the Companies Act, 2013 where-under the Tribunal constituted under the Companies Act can call or direct the calling of the AGM of the company on the application of any member of the company. I find that Section 97 of 2013 Act is not at all attracted because the present is a case of seeking extension of time and not for calling AGM on any other ground nor this is an application by a member of the company, but by the Resolution Professional appointed under the Code.

17. With regard to the objection to the prayer made in this application, I am of the view that this is an application by the Resolution Professional, who is the creature of the Code and for any difficulty he has to apply to the Adjudicating Authority which admitted the petition and directed the initiation of resolution process. The Insolvency and Bankruptcy Code is a complete Code in itself and the Adjudicating Authority undoubtedly can exercise the powers for extension of time for holding of AGM in view of the difficulties expressed by the Resolution Process. Clause (c) of sub-section 5 of Section 60 of the Code reads as under:-

“ (a) ....

(b) ....

(c) *any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.*”



18. The issue raised by the applicant-Resolution Professional clearly arises out of or in relation to the insolvency resolution of the Corporate Debtor under the Code.

19. After the admission of the petition, there was an application CA No.95 of 2017 filed by one of the shareholders, which was disposed of after contest by the Resolution Professional, vide order dated 12.09.2017.

20. Thereafter CA No.126 of 2017 was filed under Section 75 read with Section 236 of the Code, to re-call the order of admission and appointment of Resolution Professional on the ground that the charge held by the Punjab National Bank/Financial Creditor has been assigned to the Asset Reconstruction Company (India) Limited for which Form CHG-1 was filed with the ROC on 20.01.2015. That application was contested by the Financial Creditor and by a detailed order dated 04.10.2017 that application was disposed of. The Resolution Professional has been sending regularly the progress reports to the Adjudicating Authority.

21. In view of the above discussion, I find the present to be a fit case, where the time for holding of the AGM should be extended in exercise of the powers of this Adjudicating Authority under Section 60 (5) (c) of the Code.

22. Learned counsel for applicant submitted that the period may be extended for holding Annual General Meeting of the company upto 31.12.2017 and that is quite reasonable prayer. The application,

therefore, is allowed and the time for holding AGM is extended upto 31.12.2017. Copy of this order be communicated to the applicant.

Sd/-  
(Justice R.P.Nagrath)  
Member (Judicial)  
Adjudicating Authority

October 26, 2017.  
Ashwani