

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
COMPANY APPELLATE JURISDICTION**

**Company Appeal (AT) (Insol.) No. 134 of 2017**

**[Arising out of Order dated 25<sup>th</sup> July, 2017 passed by the  
Adjudicating Authority (National Company Law Tribunal), New Delhi,  
Special Bench in Company Petition No. (IB)-23(PB)/2017]**

**M/s. Hotel Gaudavan Pvt. Ltd. & Ors. ...Appellants**

**Vs.**

**Alchemist Asset Reconstruction  
Co. Ltd. & Anr. ...Respondents**

**Along with Company Appeal (AT) (Insol.) No. 163 of 2017**

**[Arising out of Order dated 16<sup>th</sup> August, 2017 passed by the  
Adjudicating Authority (National Company Law Tribunal), Principal  
Bench, New Delhi in Company Petition No. (IB)-23(PB)/2017]**

**IN THE MATTER OF:**

**Harendra Singh Rathore ...Appellant**

**Vs.**

**Arunava Sikdar & Anr. ...Respondents**

**And Company Appeal (AT) (Insol.) No. 166 of 2017**

**[Arising out of Order dated 29<sup>th</sup> August, 2017 passed by the  
Adjudicating Authority (National Company Law Tribunal), Principal  
Bench, New Delhi in Company Petition No. (IB)-23(PB)/2017]**

**M/s. Hotel Gaudavan Pvt. Ltd. ...Appellant**

**Vs.**

**Alchemist Asset Reconstruction  
Co. Ltd. & Anr. ...Respondents**

**Present: For Appellants:- None.**

**For Respondents:- Mr. Amit Singh Chadha, Senior Advocate with Mr. Abhirup Dasupta and Ms. Swati Sharma, Advocates.**

**Mr. Krishnendu Datta and Mr. Ashu Bansal, Advocates for Resolution Professional.**

## **J U D G M E N T**

### **SUDHANSU JYOTI MUKHOPADHAYA, J.**

All these appeals arise out of common 'Corporate Insolvency Resolution Process' initiated against M/s. Hotel Gaudavan Private Limited & Ors ('Corporate Debtor').

2. The brief facts of the case are that the Respondents- M/s. Alchemist Asset Reconstruction Company Limited & Anr. filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") against M/s. Hotel Gaudavan Private Limited & Ors ('Corporate Debtor').

3. On 31<sup>st</sup> March, 2017, the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi admitted the application, passed order of moratorium and appointed an 'Interim Resolution Professional' with certain directions.

4. It appears that the 'Corporate Debtor' thereafter, along with another shareholder filed a Writ Petition before the Hon'ble High Court of Rajasthan, challenging the order passed by the Adjudicating Authority. However, the Hon'ble High Court refused to look into the merits of the order dated 31<sup>st</sup> March, 2017 and left it open to be examined by this Appellate Tribunal.

5. Thereafter, the 'Corporate Debtor' along with another shareholder moved before the Hon'ble Supreme Court in SLP(C) No.12606-12707 of 2017 against different orders passed by Adjudicating Authority which were also dismissed on 26<sup>th</sup> April, 2017. The 'Corporate Debtor' and Another thereafter preferred appeal before this Appellate Tribunal on 2<sup>nd</sup> May, 2017, which was subsequently withdrawn on 17<sup>th</sup> July, 2017.

6. The 'Corporate Debtor' thereafter moved before the Arbitral Tribunal and against such action the 'Insolvency Resolution Professional' moved before the Adjudicating Authority which decided the matter against the 'Corporate Debtor' on 31<sup>st</sup> May, 2017.

7. In the meantime, as the Board of Directors refused to comply with the order of the Adjudicating Authority, the 'Interim Resolution Professional' filed Contempt Petition (CA No. 183(PB)/2017) before the Adjudicating Authority against the Directors, in which an adverse order

was passed on 29<sup>th</sup> June, 2017 by the Adjudicating Authority against the Directors.

8. As noticed above, the 'Corporate Debtor' had filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 wherein certain orders were passed against which the Appellant(s) preferred the appeal before the District Judge, Jaisalmer, who admitted the appeal, issued notice to the Respondents and passed interim orders. Against the said order, the 'Financial Creditor' moved before the Hon'ble Supreme Court in Civil Appeal No. 16929 of 2017 (arising out of S.L.P. (C) No. 18195/2017) wherein following order was passed: -

"ORDER

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*

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*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 appeal 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.”*

9. The aforesaid fact discloses not only very sorry state of affairs and its legal action on the part of the Director(s) of the ‘Corporate Debtor(s)’ which has also been noticed by Hon’ble Supreme Court in the order aforesaid.

10. In this Appellate Tribunal three appeals have been preferred. Two appeals by ‘Corporate Debtor’-M/s. Hotel Gaudavan Pvt. Ltd. and another by Mr. Harendra Singh Rathore but against three different orders arising out of same Insolvency Proceedings. All the cases were listed but since the initial date either on the ground of casualty in the family of the counsel for the Appellant(s) and illness of the counsel for the Appellant(s) or any other ground, the Appellant(s) sought for adjournments since August, 2017, which were allowed.

11. On 8<sup>th</sup> November, 2017, when all the three appeals were taken up for hearing, nobody appeared for the Appellant(s). Learned counsel brought to the notice of this Appellate Tribunal the order passed by the Hon'ble Supreme Court, as recorded above, which is final.

12. In the facts and circumstances, we have no other option but to dismiss all the three appeals with cost of Rs. 25,000/- imposed on each Appellant(s) namely, Mr. Harendra Singh Rathore, Mr. Lokendra Singh Rathore, Mr. Deependra Singh Rathore and Ms. Mohan Kanwar, to be paid by Bank Draft in favour of the Registrar, National Company Law Appellate Tribunal within thirty days from the receipt of this order.

Let copy of this order be forwarded to the Appellant(s) aforesaid at their respective addresses. Learned counsel for the Respondent(s) will also serve a copy of this order on the Directors/shareholders named above.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice A.I.S. Cheema)  
Member (Judicial)

(Balvinder Singh)  
Member(Technical)

NEW DELHI

30<sup>th</sup> November, 2017

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