

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 633 of 2018

[Arising out of Order dated 4th October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in CA No.250 of 2018 in CP (IB) No.219/7/HDB/2018]

IN THE MATTER OF:

Asset Reconstruction Company (I) Limited (ARCIL)

Regd. Office at:

The Ruby, 10th Floor, 29,
Senapati Bapat Marg, Dadar (W),
Mumbai, Maharashtra – 400028.

.... Appellant

Versus

1. Mr. Koteswara Rao Karuchola
Resolution Professional of Viceroy Hotels Ltd.
C/o K.K. Rao & Associates
2-B, Samrat Residential Complex,
#5-9-12, Saifabad, Opp. AG's Office,
Hyderabad, Telangana – 500004. Respondent No.1
2. Viceroy Hotels Limited,
Through Mr. Koteswara Rao Karuchola,
Resolution Professional,
Regd. Office At:
Plot No.20, Sector-1, Survey No.64,
4th Floor, HUDA Techno Enclave,
Madhapur, Hyderabad – 500081. Respondent No.2
3. Mahal Hotel Private Limited
Regd. Office At:
3C, 3rd Street, GB, Sahar Manor North Boas Road,
T. Nagar, Chennai, Tamil Nadu – 600017
Also At:
8-3-228, 809/A, Rahamath Nagar,
Yusufguda, Hyderabad, Telangana – 500081 Respondent No.3

Present:

**For Appellant: Mr. Arun Kathpalia, Senior Advocate with
Mr. Satendra K Rai and Mr. Aditya Dewan,
Advocates.**

For Respondents: Mr. Rana Mokharjee, Senior Advocate with Mr. Diwakar Maheshwari, Mr. Aditya V. Singh and Ms. Sreoshi Chatterjee, Advocates for Respondent No.1.

Mr. Kumar Sudeep, Advocate for Respondent No.3.

**With
Company Appeal (AT) (Insolvency) No. 718 of 2018**

[Arising out of Order dated 4th October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in CA No.250 of 2018 in CP (IB) No.219/7/HDB/2018]

IN THE MATTER OF:

Mahal Hotel Private Limited
Regd. Office At:
8-3-228/809/A,
Rahamath Nagar, Yosufguda,
Hyderabad – 500045.

.... Appellant

Versus

1. Asset Reconstruction Company (India) Limited
Regd. Office at:
Ruby, 10th Floor, 29,
Senapati Bapat Marg,
Dadar (W), Mumbai – 400028. Respondent No.1
2. Koteswara Rao Karuchola
(Resolution Professional)
Residing at 2-B,
Samrat Residential Complex
#5-9-12, Saifabad, Opp A.G's Office,
Hyderabad – 500004. Respondent No.2
3. Viceroy Hotels Limited (India) Limited,
Regd. Office At:
Plot No.20, Sector-1, Survey No.64,
4th Floor, HUDA Techno Enclave,
Madhapur, Hyderabad – 500081. Respondent No.3

Present:

For Appellant: Mr. Kumar Sudeep, Advocate.

For Respondents: Mr. Rana Mokharjee, Senior Advocate with Mr. Diwakar Maheshwari and Mr. Aditya V. Singh, Advocates for Resolution Professional.

Mr. Arun Kathpalia, Senior Advocate with Mr. Satendra K Rai, Advocate.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In the ‘Corporate Insolvency Resolution Process’ against Viceroy Hotels Limited, Appellant – Asset Reconstruction Company (I) Limited (ARCIL) filed application under Section 24(3) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘**I&B Code**’) r/w Rule 11 of the National Company Law Tribunal Rules, 2016 praying to grant stay on the reconstituted ‘Committee of Creditors’ as notified by the ‘Resolution Professional’ vide notice dated 11th July, 2018.

2. In the said application, Mahal Hotel Private Limited [Appellant in Company Appeal (AT) (Insolvency) No.718 of 2019] was impleaded as 3rd Respondent. The Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad after hearing the parties including the ‘Resolution Professional’ while holding that Mahal Hotel Private Limited was not entitled for claiming compound interest, passed the following directions by impugned order dated 4th October, 2018:-

“27. In the result, Application is disposed off by giving direction to Resolution Professional to revise the claim submitted by R-3/M/s Mahal Hotels Private Limited and its associates by calculating interest on the outstanding balance @ 24% p.a. and then assess the percentage of voting share of Respondent No.3 and its associate companies.”

3. The Appellant – ARCIL has challenged the impugned order on the ground that the Mahal Hotel Private Limited is not a ‘Financial Creditor’ and there were proceedings under Prevention of Money Laundering Act, 2002 (hereinafter referred to as the ‘**PMLA**’) initiated against it.

4. The same very impugned order has been challenged by Mahal Hotel Private limited on the ground that compound interest was not allowed by the Adjudicating Authority in its favour.

5. The very facts of the case are as follows: -

- (i) A Business Transfer Agreement was entered into between Viceroy Hotels Limited and Mahal Hotel Private Limited on 2nd April, 2011. Viceroy Hotels Limited was paid part of consideration amount of Rs.122.23 crores by Mahal Hotel Private Limited. On 22nd March, 2013, Mahal Hotel Private Limited cancelled the Business Transfer Agreement. The amount paid by Mahal Hotel Private Limited was shown as forfeited and was so reflected in the Balance Sheet of the Viceroy Hotels Limited (‘Corporate Debtor’) for the Financial Year 2013-14 onwards.
- (ii) ‘Corporate Insolvency Resolution Process’ was initiated against Viceroy Hotels Limited (‘Corporate Debtor’) on 12th March, 2018 and the ‘Committee of Creditors’ was constituted. The first meeting of the ‘Committee of Creditors’ was held on 9th April, 2018, in which Mahal Hotel Private Limited was not the Member. On 23rd April, 2018, the Information Memorandum was circulated by the ‘Resolution Professional’. The list of creditors as disclosed in the Information Memorandum did not include the Mahal Hotel Private Limited.
- (iii) An updated list of Members of ‘Committee of Creditors’ was circulated on 7th July, 2018 by the ‘Resolution Professional’ in

which also the Mahal Hotel Private Limited was not shown as a Member. The 'Committee of Creditors' directed the 'Resolution Professional' on 7th July, 2018 to convene a meeting for change of 'Resolution Professional'. On 11th July, 2018, 'Resolution Professional' circulated an email annexing therewith updated list of Members of the 'Committee of Creditors' by including Mahal Hotel Private Limited as 'Financial Creditor'.

- (iv) According to the Appellant, the aforesaid inclusion of Mahal Hotel Private Limited as 'Financial Creditor' was intentionally made by Respondent No.1 - Mr. Koteswara Rao Karuchola, 'Resolution Professional' with intention to ensure that he is not removed by the 'Committee of Creditors'. It was submitted that if Mahal Hotel Private Limited would have been included as a Member of the 'Committee of Creditors', they would have voted in favour of Mr. Koteswara Rao Karuchola, 'Resolution Professional', who has unethically included the Mahal Hotel Private Limited as 'Financial Creditor'
- (v) In so far as merit of the claim of Mahal Hotel Private Limited is concerned, it was submitted that the above claim is not a debt shown in the books of accounts of 'Corporate Debtor'. The claimed amount has been received by the 'Corporate Debtor' under Business Transfer Agreement dated 2nd April, 2011, which was forfeited by the 'Corporate Debtor' as far back as in 2013 on account of Mahal Hotel Private Limited's inability to perform the part of Business Transfer Agreement. Therefore, according to the Appellant-ARCIL, apart from forfeiture of the debt amount, the amount received under Business Transfer Agreement do not come within the meaning of 'Financial Debt' and, therefore, Mahal Hotel Private Limited could not have been included as 'Financial Creditor'.

- (vi) It was further submitted that the inclusion of the name of Mahal Hotel Private Limited was made only when a decision was taken to remove the 'Resolution Professional' on 11th July, 2018. It was submitted that after three months, it was not open to 'Resolution Professional' to include the new 'Financial Creditor' and the same was done with an intent to defeat the purpose of I&B Code.
- (vii) It was further submitted that Mahal Hotel Private Limited is involved in money laundering, of which the transactions is also stated to be one such, as per Enforcement Directorate under Prevention of Money Laundering Act, 2002.

6. Initially, the Mahal Hotel Private Limited, who is also Appellant in Company Appeal (AT) (Insolvency) No.718 of 2018 contested the Appeal preferred by ARCIL. It was submitted that the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench by its earlier order dated 11th July, 2019 set-aside the report of Enforcement Directorate on an application moved by ARCIL. According to the learned Counsel for Mahal Hotel Private Limited, if an investigation commences by Enforcement Directorate and is in progress but not concluded, under PMLA on a transaction that forms the basis of the admitted claim of a financial-creditor under the IBC, it does not necessarily follow that the said claim must be set-aside by the National Company Law Appellate Tribunal acting under the IBC. It was submitted that the ARCIL, is in essence asking for this Appellate Tribunal to hold that Mahal Hotel Private Limited is guilty of money laundering while investigation by Enforcement Directorate is still going on.

7. The Appellant – ARCIL filed additional affidavit enclosing copy of Provisional Attachment Order No.04/2019 dated 26th March, 2019 passed by the Office of the Joint Director, Directorate of Enforcement, Chennai Zonal Office, Chennai under sub-section (1) of Section 5 of the Prevention of Money Laundering Act, 2002. From the said order, it appears that after considering

the facts and circumstances of the case and evidence available, the assets of Mahal Hotel Private Limited were attached.

8. For the aforesaid reasons, when the matter was taken up on 13th August, 2019, Mr. Kumar Sudeep, learned Counsel appearing on behalf of Mahal Hotel Private Limited submitted that in view of the subsequent development, the Appellant - Mahal Hotel Private Limited is not pressing the Company Appeal (AT) (Insolvency) No.718 of 2018.

9. From the discussions as made above, while we hold that there is a dispute as to whether Mahal Hotel Private Limited comes within the meaning of 'Financial Creditor' or not, we hold that after constitution of the 'Committee of Creditors', without its permission, the 'Resolution Professional' was not competent to entertain more applications after three months to include one or other person as 'Financial Creditor'. Further, once a decision was taken by the 'Committee of Creditors' to call for a meeting for removal of Mr. Koteswara Rao Karuchola as an 'Resolution Professional', it was improper for him to include Mahal Hotel Private Limited as 'Financial Creditor' of the Member of the 'Committee of Creditors'.

10. Further, money laundering case having been initiated against Mahal Hotel Private Limited, the said Hotel cannot be allowed to be the Member of the 'Committee of Creditors'.

11. The Adjudicating Authority has failed to notice the aforesaid facts and circumstances and without going into the question of delay in inclusion of Mahal Hotel Private Limited as 'Financial Creditor', has decided the claim, though a petition was filed by Mahal Hotel Private Limited for the directions in its favour.

12. In view of the aforesaid findings, the impugned order dated 4th October, 2018 cannot be upheld. The said order is set-aside. We are not giving any finding with regard to the performance of the 'Resolution Professional'. However, it will be open to the Members of the 'Committee of

Creditors' to bring the fact to the notice of the Insolvency and Bankruptcy Board of India for appropriate order. The 'Corporate Insolvency Resolution Process' be completed in accordance with law. Company Appeal (AT) (Insolvency) No.633 of 2018 is allowed. Company Appeal (AT) (Insolvency) No.718 of 2018 is disposed of as being not pressed. However, in the facts and circumstances, there shall be no order as to costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

18th November, 2019

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