

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
AT CHENNAI**

**COMPANY APPEAL (AT) (CH) (INS.) No. 225/2023**

**(IA Nos. 733, 734, 735 & 736/2023)**

**(Filed under Section 61 of the Insolvency and Bankruptcy Code, 2016)**

**(Against the Impugned Order dated 02/05/2023 in**

**C.P.(IB) No. 219/7/HDB/2017 passed by the ‘Adjudicating Authority’,**

**National Company Law Tribunal, Hyderabad Bench)**

**In the matter of :**

**Mahal Hotel Private Limited**

Through its Authorised Representative

Mr. Mandha Bal Reddy

Registered office at:

3C, 3<sup>rd</sup> Street, GB, Sahar Manor,

North Boag Road, T. Nagar,

Chennai, Tamil Nadu – 600017

Mobile:

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**... Appellant**

**Versus**

**Dr. Govindarajula Venkata Narasimha Rao**

Resolution Professional of Viceroy Hotels Limited

Address: B/1201, Lansum Etania, Puppalaguda,

Near MyHome Avatar, West Marredpally,

Hyderabad – 500075

Also at:

Plot No.20, Sector-I, Survey No.64,

4<sup>th</sup> Floor, Huda Techno Enclave,

Hyderabad – 500081

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**...Respondent**

**Present :**

For Appellant : Mr. Sandeep Bajaj & Ms. Aakanksha Nehra,  
Advocates  
For Respondent : Mr. Pradeep Joy, Advocate

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

**(Virtual Mode)**

**[Per: Mrs. Shreesha Merla; Member (Technical)]**

1. This Appeal is filed under Section 61 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘the Code’) against the Impugned Order dated 02/05/2023, passed by the ‘Adjudicating Authority’/ ‘National Company Law Tribunal, Hyderabad Bench’ in IA No. 1437/2022 in C.P. (IB) No. 219/7/HDB/2017 filed by the Appellant herein seeking a direction under Section 60 (5) of the Code to declare the Appellant as the ‘Financial Creditor’ and include the Appellant’s name in the list of Creditors of the Corporate Debtor. By the Impugned Order, the Adjudicating Authority has dismissed the Application observing as follows:

*“19. A holistic reading of the order of Hon'ble NCLAT, gives no room to contend that, as the Hon'ble NCLAT has itself recorded that "there is a dispute as to whether the applicant comes within the meaning of financial creditor or not" the issue as to the status of the applicant as financial creditor has not attained finality, especially when Hon'ble NCLAT, in unequivocal terms held that, the impugned order dated 4th October, 2018, where-under the applicant's status as Financial Creditor has been confirmed and was ordered to be included as Member of CoC, has been upheld, is liable to be set aside and accordingly set aside the said order.*

20. Therefore, in the light of our discussion as above, we are unable find any substance in the submission of the Ld. Sr. Counsel that, Hon'ble NCLAT did not render a conclusive finding on the aspect whether or not the applicant is a financial creditor or on inclusion of the applicant in the list of creditors of the corporate debtor.

21. That apart, the below stated factual findings of Hon'ble NCLAT, i.e, "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'.

"that 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." which remained unchanged also disentitles the applicant the relief sought for in this application.

Since attained finality, keeps the subject plea to complete rest.

The points are answered accordingly.”

2. The brief factual matrix of the case is that the Appellant had initially on 02/04/2011 entered into a Business Transfer Agreement (BTA) with the Corporate Debtor for the purpose of acquiring a hotel project as an ongoing concern for a total Sale Consideration of Rs. 4,80,00,00,000/-, but on 22/03/2013, the BTA was terminated as the transaction was not completed and therefore, the Appellant on 22/07/2013 sought a refund of the total Consideration paid from the Corporate Debtor, under the terms of the BTA. Despite several requests, the Corporate Debtor failed to pay the said amount and responded only on 15/12/2015 whereby, the Corporate Debtor had assured the Appellant that the loan amounting to Rs. 134,64,00,000/- would be repaid. It is submitted that on 12/03/2018 CIRP was initiated against the Corporate Debtor admitting a Section 7 Application filed by ARCIL.

3. It is the Appellant's case that on 04/07/2018, a Claim was filed for an amount of Rs. 401,03,08,323/- before the Erstwhile Resolution Professional (RP) and was refiled on 10/07/2018 in an electronic form. It is submitted that on 11/07/2018, the Erstwhile RP had sent a Notice to the Appellant for attending the 5<sup>th</sup> CoC Meeting scheduled on 16/07/2018. On 19/07/2018, the Erstwhile RP published another list of reconstituted CoC, wherein the admitted Claim amount was Rs. 395,95,77,035/-. The reconstituted CoC was challenged by ARCIL in C.A. 250/2018, which was dismissed by the Adjudicating Authority, vide Order dated 04/10/2018. On 24/11/2018, the Erstwhile RP published a list of Creditors, which included the name of the Appellant under the head of Financial Creditors

admitting a Claim amount of Rs. 318,67,44,770/-. While so, ARCIL challenged the dismissal Order dated 04/10/2018, in an Appeal C.A. (AT) No. 633/2018, which was allowed by NCLAT on 18/11/2019, observing as follows:

*“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’.”*

4. The Learned Counsel for the Appellant strenuously argued that the NCLAT had observed that *‘there is a dispute as to whether Mahal Hotel Pvt. Ltd. comes within the meaning of Financial Creditor’* or not and therefore, the question of whether the Appellant being a Financial Creditor or any Creditor was not adjudicated upon and that the Adjudicating Authority has erroneously concluded that the Appellant not being a part of the CoC and therefore, not falling within the ambit of the definition of Financial Creditor, has attained finality. It is submitted that pursuant to the Order of NCLAT dated 18/11/2019, the CoC was reconstituted and the Appellant filed IA No. 1437/2022 *inter alia* seeking declaration of the Appellant as the Financial Creditor, which was dismissed by

the Adjudicating Authority on the ground that the finding in the NCLAT Order remained unchallenged and therefore, the status of the Appellant cannot be adjudicated at this stage.

5. It is submitted by the Learned Counsel for the Appellant that the CoC had approved the Resolution Plan and IA No. 1343/2022 was filed by the Respondent seeking approval of the Resolution Plan which was dismissed vide Order dated 09/06/2023 and it was directed to the RP to issue a fresh Form – G. Keeping these events in view, it is contended by the Learned Counsel for the Appellant that the status of the Appellant ought to be decided whether it is a Financial Creditor, Operational Creditor or any Creditor and the Claim of the Appellant requires to be adjudicated. It was strenuously argued by the Learned Counsel for the Appellant that despite the fact that the NCLAT Order dated 18/11/2019 did not decide the ‘disputed question’, the Adjudicating Authority has erroneously concluded that the finding remained unchallenged and therefore, cannot be raised now.

6. It is the case of the Respondent / RP of the Corporate Debtor Company that the Appeal is barred by the principle of *Res Judicata* as initially ARCIL had challenged the Order in IA No. 250/2018 in C.A. (AT) (Ins) No. 633/2018, on the ground that the Appellant is not a Financial Creditor.

7. The Appellant had wrongly chosen to reinitiate an entire set of proceedings on the same issue and therefore, the proceeding is barred by the principle of *Res Judicata*. The Learned Counsel for the Respondent placed reliance on the

Judgment of the Hon'ble Supreme Court in the matter of '*Satyadhyan Ghosal Vs. Deorajin Debi*' reported in [(1960) 3 SCR 590] in support of his case that the present Appeal is hit by the principle of Res Judicata. The relevant para is extracted as hereunder:

*“7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter -- whether on a question of fact or a question of law -- has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.”*

8. It is also the case of the Respondent that the BTA Agreement did not have the commercial effect of a borrowing and it was intended for the transfer of business division on a slump sale basis as evident from the terms and conditions of the BTA Agreement. There is no commercial effect of a borrowing having time value of money and therefore, does not fall within the definition of Financial Debt. It is also submitted that the Order of IA No. 250/2018 dated 04/10/2018

has merged with the Order of NCLAT in C.A. (AT) (Ins) No. 633/2018 which has since attained finality and therefore, the Appeal is not maintainable.

**Assessment:**

9. It is the main case of the Appellant that in C.A. (AT) (Ins) No. 633/2018 filed by ARCIL against the Order in IA No. 250/2018, NCLAT has not decided as to whether the Appellant is a ‘Financial Creditor’ or not and as this disputed question has not been adjudicated, the finding, cannot, therefore, be said to be final. At the outset, the reliefs prayed for in IA No. 1437/2023 are detailed as hereunder:

*“Prayers sought in IA 1437/2023 before NCLT, Hyderabad bench:*

- a. Declare the Applicant as Financial Creditor of the Corporate Debtor as defined in section 5(8) of the Code;*
- b. Direct the Resolution Professional of Viceroy Hotels Ltd. to include Applicant’s name in the list of creditors and grant other consequential reliefs in respect of Applicant as enshrined under the Code;*
- c. Any other order(s) as deemed fit and appropriate by this Hon’ble Tribunal in the given facts and circumstances.”*

10. The submissions and observations made by this Tribunal in C.A. (AT) (Ins) No. 633/2018 are detailed as hereunder:

*“(v) In so far as merit of the claim of Mahal Hotels 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 the 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 liability 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 Hotels Private Limited could not have been included as Financial Creditor.*

....

*6. Initially, the Mahal Hotel Private Limited, who is also Appellant in CA(AT)(INS) 718/2018 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 IBC. ....”*

**11.** At the cost of repetition, Paras 9 to 12 of C.A. (AT) (Ins) No. 633/2018 are reproduced as hereunder:

*“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”*

**12.** It is seen from the aforementioned observation that while allowing C.A. (AT) (Ins) 633/2018, this Tribunal noted that there is a dispute as to whether Mahal Hotel Pvt. Ltd. comes within the meaning of 'Financial Creditor' or not,

and has concluded that *'further, once a decision was taken by the Committee of Creditors to call for a Meeting for removal of Mr. Koteswara Rao Karuchola as RP, it was improper for him to include Mahal Hotel Pvt. Ltd. as Financial Creditor of the Member of the Committee of Creditors. Further, money laundering case having been initiated against Mahal Hotel Pvt. Ltd., the said Hotel cannot be allowed to be Member of Committee of Creditors'*. It was also observed in paras 11 and 12 that the Adjudicating Authority had failed to notice the aforesaid facts and circumstances and without going into the question of delay in inclusion of Mahal Hotel Pvt. Ltd. as Financial Creditor, has decided the Claim and this Tribunal *has set aside the Order dated 04/10/2018*, whereby the Adjudicating Authority has directed the RP to revise the Claim submitted by Mahal Hotel Pvt. Ltd.. Therefore, it is crystal clear that the Order of this Tribunal dated 18/11/2019 has set aside the finding of the Adjudicating Authority revising the Claim of the Appellant herein without granting any liberty to once again approach the Adjudicating Authority for adjudication of its Claim. As this Tribunal had examined whether the Appellant is a Financial Creditor within the meaning of Section 5 (7) of the Code, the Appellant herein ought to have preferred an Appeal under Section 62 of the Code. It is not in dispute that the Appellant did not challenge these findings by way of an Appeal. Therefore, we find force in the contention of the Learned Counsel for the Respondent that as the Order dated 18/11/2019 has attained finality and the reliefs sought for by the Appellant namely, inclusion of its Claim as a Financial Creditor and as a Member

of the CoC, cannot be reargued at this belated stage. It is also brought to the notice of this Bench by that the Appeal challenging the rejection of the Resolution Plan by the Adjudicating Authority vide Order dated 09/06/2023 in C.A. (AT) (Ins) No. 163 & 183/2023 has been allowed by this Tribunal on 06/10/2023 and the 'Plan' has since been implemented. The Hon'ble Supreme Court in a catena of Judgments has held that the approval by the Adjudicating Authority renders the Resolution Plan binding on all the Stakeholders. The Hon'ble Apex Court in the matter of '*Essar Steel India Ltd. Vs. Sathish Kumar Gupta*' reported in *[(2020) 8 SCC 531]* has observed that the 'clean slate' theory is to prevent hydra heads popping up, preventing any past Claims from resurging and thereby leading to any uncertainty regarding the amounts payable by the Resolution Applicant who successfully takes over the business of the Corporate Debtor.

**13.** For all the foregoing reasons, the Company Appeal (AT) (CH) (Ins) No. 225/2023, is accordingly dismissed. No Order as to Costs. All connected pending Interlocutory Applications, if any, are closed.

**[Justice Rakesh Kumar Jain]  
Member (Judicial)**

**[Shreesha Merla]  
Member (Technical)**

24/11/2023  
SPR/TM