

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

**PRINCIPAL BENCH
NEW DELHI**

COMPANY APPLICATION NO.221 OF 2017

IN

Company Petition No.(IB)-23(PB)/2017

**Present:CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE
PRESIDENT**

16.08.2017

&

SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

In the matter of:

**UNDER SECTION 60(5) READ WITH SECTION 74(2) AND SECTION
65 OF INSOLVEDNCY AND BANKRUPTCY COST, 2016.**

**ALCHEMIST ASSET RECONSTRUCTION
COMPANY LIMITED
D-54,FIRST FLOOR, DEFENCE COLONY
NEW DELHI -110024**

...Financial Creditor

VERSUS

Page 1 of 7

 Alchemist Asset Reconstruction Co.Ltd. V Hotel Gaudavan Pvt. Ltd. CP No.221 of 2017
In CP No.(IB)-23(PB)/2017

**HOTEL GAUDAVAN PRIVATE LIMITED
C-22, VAISHALI NAGAR,
JAIPUR – 302021
RAJASTHAN**

....Corporate Debtor

AND IN THE MATTER OF:

HARENDRA SINGH RATHORE

... Applicant

VERSUS

MR. ARUNAVA SIKDAR & ANR

... Respondents

**ADVOCATE FOR THE PETITIONERS :Mr.Siddharth, Sr. Advocate
Mr.Ajay Tripathi, Advocate**

ADVOCATE FOR RESPONDENT : -

Rendered By: R.VARADHARAJAN, MEMBER GT)

ORDER

This is an application filed by one Mr. Harendra Singh Rathore claiming to be a Director of the Corporate Debtor/Respondent Company in the main CP. The application is stated to be filed under Section 60 (5) read with Section 74 (2) and Section 65 of Insolvency and Bankruptcy Code, 2016 (IBC,2016) seeking for the punishment against Insolvency Resolution Professional (IRP) for the alleged dereliction in his duties as the Insolvency Professional of the Corporate Debtor. The allegation made against the IRP/Respondent is primarily on the basis that his filing of Application in CA No.182(PB)/2017 is motivated and cooked up against the Corporate Debtor and the Directors of the Corporate Debtor maliciously and

Page 2 of 7

**Alchemist Asset Reconstruction Co.Ltd. V Hotel Gaudavan Pvt. Ltd. CP No.221 of 2017
In CP No.(IB)-23(PB)/2017**





that Ld. IRP is acting more as a recovery agent of the Financial creditor than balancing the interest of all the stakeholders. It is further averred that Application CA No.182/2017 has been filed on false pleas particularly in relation to 3 vehicles alleged to have been not disclosed by the Corporate Debtor and its Directors and that in relation to said vehicles there is no concealment and hence it has not warranted the filing of the application in CA 182/2017 by the IRP. It is also evidenced from the perusal of the application that the allegation that certain Financial Creditors have not been included in the Committee of Creditors as well as Operational Creditors have also not been included all of which vitiates the decision of the Committee of Creditors. In this regard, it is pointed out by the Applicant that the notice which was issued in consonance with the provisions of Section 15 of IBC, 2016 is in itself erroneous as it contains wrong particulars while calling for the claims from the Creditors in as much as the last date for filing the claim is stated to be 15.2.2017 whereas the publication was effected only on 1.4.2017 which is subsequent to the last date for receiving the claims, as provided for in the notice/publication. Taking into consideration the above aspects, the Applicant has prayed for the following reliefs namely:

- i. Allow the present Application of the Applicant and initiate punishment proceedings u/s 60(5) read with Section 74(2) and Section 65 of Insolvency and Bankruptcy Code, 2016 for punishing the Wrong-doer with a maximum fine of Rs.1 Crore u/s 65(1) of Insolvency and Bankruptcy Code, 2016 and for maximum punishment of imprisonment;
- ii. Adjudicate the Application no. 182(PB)/2017 only after adjudicating the present application in the interest of justice;





- iii. Pass any other order(s) as this Hon'ble Tribunal deems fit.

2. In response to the above Application, the Respondent - IRP has filed a detailed reply wherein it is brought out by the Ld. IRP that the efforts of the Corporate Debtor and its Director has been to thwart the Insolvency Resolution Process repeatedly by approaching several forums and which has also met with failure. It is also pointed out by the IRP that even in relation to the appeal which was filed before the Hon'ble NCLAT by the Corporate Debtor was subsequently withdrawn and that the Hon'ble NCLAT had dismissed the Appeal filed as withdrawn vide order dated 17.7.2017 and it is also pointed out by the Ld. IRP that while dismissing the said Appeal as withdrawn, no liberty was granted what so ever to the Corporate Debtor to assail the order dated 31.3.2017. In the circumstances, Ld. IRP submits that the Corporate Debtor and its Directors have met with failure in relation to the challenging the Insolvency Resolution Process including the one filed before the highest Court of the land namely the Hon'ble Supreme Court. Ld. IRP has also pointed out acts perpetuated by the erstwhile management of the Corporate Debtor in trying to circumvent the order passed by this Tribunal by approaching the Arbitrator as well as the District Court of

TH

Q

Jaisalmer has also been stayed by the order passed by the Hon'ble Supreme Court vide order dated 21.7.2017. It is also submitted by the Ld. Counsel representing the IRP that this Application is only a counter blast to avoid the contempt proceedings as sought by the Ld. IRP for willful disobedience of orders of this Tribunal passed on various dates and this Application is nothing but an attempt to delay and obstruct the Insolvency Process as is prima facie evident from the frivolous allegations made by the erstwhile Directors of the Corporate Debtor as is evident by their actions to initiate in multiple avenues.

3. We have considered the rival pleas of the parties before us in the Application and do not find any merit in the Application as filed by the Applicants, for the following reasons.

A perusal of the order passed by this Tribunal commencing from 31.3.2017 wherein the Corporate Insolvency Resolution process was initiated against the Corporate Debtor by admitting the Petition filed by the Financial Creditor as well as the subsequent orders passed by this Tribunal based on applications filed by the Ld. IRP in furtherance of the order dated 31.3.2017 and also taking into consideration the multiplicity of proceedings perpetuated by the erstwhile management of the Corporate Debtor, it is evident that there is a constant effort

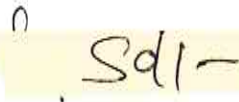


to undermine the orders passed by this Tribunal as well as the authority of the IRP as conferred by IBC,2016 on the part of the erstwhile (suspended) management of the Corporate Debtor, which in itself fully brings forth the facts including the one which was passed in CA No. 182(PB) of 2017, wherein the erstwhile management was directed to hand over three vehicles which seems to be one of the subject matter which is sought to be raised in this Application. We also find no merit in the contention in trying to raise a dispute in relation to the paper publication which seems to have been effected by virtue of Section 15 of IBC,2016 by the Ld. IRP. It is pertinent to note that both in the English as well as in vernacular publication effected by Ld. IRP in Col.9 of the said publication it is expressly mentioned in bold letters that the last date for submission of claims is 14.4.2017 and that the publication itself seems to have been effected only on 1.4.2017. In the circumstances, the date of 14.2.2017 which has been given in line No.5 of the bottom seems more likely to be a publisher/printer's devil rather than deliberate doing of the Ld. IRP and hence no motive can be attributed to the IRP. It is also pertinent to note if at all there can be any grievance in relation to the error in date as mentioned in the paper publication, the same should have been raised either by a Financial Creditor who is alleged to have been left out or




from the Operational Creditor who it is claimed are 52 in numbers and not from the Applicant as he is not in any way affected by the paper publication which in itself exposes the fallacy of the Applicant's moves and the abuse of process in which he is seeking to indulge. As stated above, we do not find any merit in the Application and vide order dated 16.08.2017, we have already dismissed the Application with cost of Rs.2.00 lakhs to be personally paid by the applicant from his own account without debiting Company's accounts.


(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT


(R.VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta
16.8.2017