



**Authority' (National Company Law Tribunal, Hyderabad Bench - I)**

**In the matter of:**

**Asset Reconstruction Company (India) Ltd. ... Appellant**  
v.

**Dr. Govindarajula Venkata Narasimha Rao, RP of ...Respondent**  
**Viceroy Hotels Limited**

**Present :**

For Appellant : Mr. P. Ravi Charan, Advocate  
For Respondent : Mr. P.S. Raman, Senior Advocate  
For Ms. Lakshana Viravalli, Advocate

**ORDER**  
**(Virtual Mode)**

**06.10.2023:**

**Comp. App. (AT)(CH)(Ins) No.166 of 2023**

Heard Mr. E. Omprakash, Learned Senior Counsel, appearing for the 'Appellant' in the instant Comp. App. (AT)(CH)(Ins) No.166 of 2023.

According to the Learned Counsel for the 'Appellant', the 'Appellant' has filed a 'Memo' dated 05.10.2023, before the 'Office of the Registry', whereby and whereunder, the 'Appellant', among other things mentioned that as per the 'Performance Bank Guarantee' dated 10.11.2022, published by the 'Appellant', it can be seen that the expiry date for the 'Performance Bank Guarantee' ("PBG") is 6 months, subject to periodic extensions and Renewal in terms of Clause 2.15.2 in the 'Appellant' RFRP other Bank, etc.

In this connection, on behalf of the ‘Appellant’, it is brought to the ‘Notice’ of this ‘Tribunal’ that the ‘Kotak Mahindra Bank’, had issued a letter dated 12.06.2023, whereby and whereunder, it is made quite clear that the ‘Bank Guarantee’ is still currently alive and subsisting in the Bank’s system.

Added further, the said ‘Performance Bank Guarantee’ is valid till date and continues to be valid till the full ‘Resolution Plan’ amount is paid.

On behalf of the ‘2<sup>nd</sup> Respondent’/‘CoC’, even in the ‘Memo’ filed by the ‘Appellant’ side dated 05.10.2023 at paragraph 4, it is covered that the 2<sup>nd</sup> Respondent/CoC, had no objection to the instant Comp. App (AT) (CH) (Ins) 166 of 2023, being allowed and had filed a ‘Memo’ dated 15.06.2023, before the ‘Office of the Registry’ and the said fact is not disputed on behalf of the ‘Respondents’ side.

This ‘Tribunal’, taking note of the fact that in terms of the letter dated 12.06.2023, issued by the ‘Kotak Mahindra Bank’, (vide Annexure-14 at Pg. 292 of Volume-II of the ‘Appeal Paper Book’), whereby and whereunder, it was categorically mentioned that the ‘Bank Guarantee’ is still currently alive and subsisting in the Bank’s system and the said ‘PBG’, is valid till date and continues to be valid till the full ‘Resolution Plan amount’ is paid. This ‘Tribunal’, hereby allows the instant Comp. App. (AT)(CH)(Ins) 166 of 2023, by setting aside the ‘Impugned Order’, dated 09.06.2023 in IA No.1343 of 2022 in C.P.(IB) No.219 of 2017, passed by the ‘Adjudicating Authority’/‘National Company Law

Tribunal’, Hyderabad Bench-1. In rejecting the Appellant’s Resolution Plan, which has garnered 95.82% votes in the ‘Committee of Creditors’. Accordingly, the instant Comp. App. (AT) (CH) (Ins) 166 of 2023 is allowed, the ‘Impugned Order’, dated 09.06.2023 in IA No.1343 of 2022 in C.P.(IB) No.219 of 2017, passed by the ‘Adjudicating Authority’/‘National Company Law Tribunal’, Hyderabad Bench, is hereby set aside, of course, for the reasons assigned by this ‘Tribunal’ in this ‘Appeal’. No costs. The connected pending I.A. Nos. 540/2023 and 541/2023 are closed.

As a logical corollary, the I.A. No. 1343 of 2022 (Seeking approval of Resolution Plan) in C.P.(IB) No.219 of 2017 is allowed.

**Comp. App. (AT)(CH)(Ins) No.183 of 2023**

On behalf of the ‘Appellant’, the Learned Counsel on record Mr. P. Ravi Charan, a memo dated 05.10.2023, is filed, before the ‘Office of the Registry’, whereby and whereunder, it is averred among other things that as per Clause 2.15.2 of RFRP (vide Vol.2 P.324 and 325 of the ‘Appeal Paper Book’), which specifies the ‘Performance Security’, shall be valid until the earlier of (i) all the dues payable by the Successful Resolution Applicant(s) pursuant to the ‘Resolution Plan’ and/or/under by virtue of the RFRP have been fully paid and its claim have satisfied or discharged; or (ii) till the CoC and /or, if the ‘CoC’ as a Body does not subsist, by ‘Financial Creditors’, having more than 51% voting

share in the `CoC`, certifies that the Resolution Plan, has been effected to the satisfaction of the `Committee of Creditors`, etc.

It is also quite evident on the contents of `Memo` dated 05.10.2023 ,filed on behalf of the `Appellant` that through the letter dated 12.06.2023, the `Bank Guarantor` / `Kotak Mahindra Bank`, has provided some clarification and confirmation that the `Performance Bank Guarantee`, issued by it is allowed and shall be valid and binding on the `Bank Guarantor`, till all the dues payable by the `Resolution Applicant`, pursuant to the `Resolution Plan` and / or / under by virtue of RFRP have been filed to which being satisfied and discharged, this `Tribunal` after going through the supra of the contents of the `Memo` filed by the `Appellant` through their Learned Counsel dated 05.10.2023, this `Tribunal` keeping in mind, the prime fact that the letter dated 12.06.2023 of the `Kotak Mahindra Bank` as `Guarantor`, provided clarification and confirmation (vide page 292 of the `Appeal Paper Book`) issued by it, also shall be valid and binding with `Bank Guarantor`, till date, the `Resolution Applicant`, in relation to the `Resolution Plan` etc., and `PBG`, it is valid for the whole implementation schedule, at this stage, simpliciter, this `Tribunal` is perforced to set aside the `Impugned Order`, dated 09.06.2023 in IA/1343/2022 in CP(IB) No.219 of 2017, of course, for the reasons assigned in this `Appeal`. As a logical corollary, in allowing the instant Comp. App (AT) (CH) (Ins) 183 of 2023, this `Tribunal` has set aside the `Impugned Order`. passed by the `Adjudicating Authority`, in

IA/1343/2022 in CP(IB)No.219 of 2017, stands allowed. No Costs. The connected pending IA Nos.584 & 585 of 2023 are closed.

**[Justice M. Venugopal]**  
**Member (Judicial)**

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

SE/TM