

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

**Interlocutory Application No.4021/2022
IN
Company Petition No. (IB)-571/PB/2021**

IN THE MATTER OF:

JM Financial Asset Reconstruction Company Limited
(acting in its capacity as trustee of Hotel II May, 2022 Trust)

... Financial Creditor/ Petitioner

Versus

Asian Hotels (West) Limited

... Corporate Debtor

AND IN THE MATTER OF:

Asian Hotels (West) Limited

... Applicants

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

Order Delivered on: 16.09.2022

ORDER

PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

The instant interlocutory application is filed on behalf of M/s. Asian Hotels (West) Limited with a prayer to:

- a) *'pass an order clarifying/modifying Paras 1 and 8 of the order dated 05.08.2022 that the Application has been filed by the Applicants claiming themselves to be the shareholders of the Respondent which assertion has been seriously disputed by the Respondent referring to the pending proceeding before the Hon'ble Delhi High Court in RFA (OS) No. 88/2018; and*
- b) *pass an order to expunge the observations made in Paras 4 and 8 of the order dated 05.08.2022 to the extent as highlighted in Paras 5 and 6 above; and/or*
- c) *pass such other/orders(s) as this Hon'ble Tribunal deems fit.'*

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IN
C.P. No. IB-571/ND/2021
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2. Briefly stated the facts of the present case as stated by the applicant are that this Adjudicating Authority had made observations in its order dated 05.08.2022 by ignoring all the contentions raised by the applicant and the observations so made may severely prejudice the applicant in future. The applicant further submits that the observations made in the said order may be used against the applicant in any other proceedings presently pending, or initiated in future which can seriously prejudice/ impact the interest of respondent.
3. Taking into consideration the aforesaid facts and circumstances, this Adjudicating Authority observes that the issue in the order dated 05.08.2022 in I.A. No. 5699/PB/2021 was only limited to the prayer of M/s. Asian Hotels (East) Limited, Mr. Radhe Shyam Saraf and Mr. Ratana Saraf (applicants therein) seeking impleadment as party as respondent in C.P.(IB)/ 571/PB/2019 and this Adjudicating Authority had not gone into the merits of the averments of the parties.
4. Further the Hon'ble NCLAT **in Agarwal Coal Corporation (P.) Ltd. v. Sun Paper Mill Ltd - [2022] 134 taxmann.com 181 (NCL-AT)** observed that it was the well laid down proposition of law that 'in the absence of any power of 'Review' or 'Recall' vested with the 'Adjudicating Authority' - 'Appellate Authority, an order/judgment passed by it cannot be either reviewed or recalled as opined by the Tribunal.
5. Accordingly, the instant application i.e., **I.A./4021/2022 being devoid of merits, stands dismissed as to no orders to costs.**

(DR.BINOD KUMAR SINHA)
MEMBER (T)

(DHARMINDER SINGH)
MEMBER (J)