

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1546 of 2022**

[Arising out of Order dated 08.12.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in I.A. No. 3727 of 2022 in C.P. (IB) No. 532/IBC/NCLT/MB/MAH/2018]

**IN THE MATTER OF:**

**1. Tulip Star Hotels Limited**

Through its Authorized Representative  
Having its office at Indira Palace Building  
H-Block, Middle Circle,  
Connaught Circus,  
New Delhi – 110001.

Also at  
Chander Mukhi, (Basement),  
Nariman Point, Mumbai – 400021 MH.

**2. Tulip Hotels Private Limited**

Through its Authorized Representative  
Having office at Chander Mukhi,  
(Basement), Nariman Point,  
Mumbai – 400021 MH

**...Appellants**

**Versus**

**Mr. Anish Niranjana Nanavaty**

Resolution Professional of V Hotels Limited  
Reg No. IBBI/IPA-002/IP-N00272/2017-18/10830  
Having office at Chander Mukhi,  
(Basement), Nariman Point,  
Mumbai – 400021.

**...Respondent**

**Present:**

**For Appellants:** Mr. Virender Ganda, Sr. Advocate with Mr. Hitesh Sachar, Ms. Anju Jain, Ms. Pinki Sah, Mr. Ayandeb Mitra, Advocates.

**For Respondent:** Mr. Arun Kathpalia and Mr. Vivek Kohli, Sr. Advocates with Mr. Akshay Sapre, Mr. Aditya V. Singh, Mr. Kauser Hussain, Ms. Megha Rana, Advocates for R-1 (RP).

Mr. Ramji Srinivasan, Sr. Advocate with Ms. Shruti Pandey, Ms. Tine Abraham, Ms. Varuna Bhanrale, Mr. Aayush Marwah, Advocates for ARCIL.

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

### **ASHOK BHUSHAN, J.**

This Appeal has been filed against the order dated 08.12.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in I.A. No. 3727 of 2022 filed by the Resolution Professional to take on record the updated list of creditors. Application was allowed. The Appellant aggrieved by the said order has come up in this Appeal.

2. Appellants claim to be the Promoter and Shareholder of the Corporate Debtor i.e. V. Hotels Limited. Insolvency proceedings were commenced against the Corporate Debtor vide order dated 31.05.2019 passed by the Adjudicating Authority. The order was challenged in the Appeal which Appeal was allowed, however, the order passed by the Appellate Tribunal has been set aside by the Hon'ble Supreme Court. In result, the insolvency resolution process has again commenced.

3. Shri Virender Ganda, learned senior counsel for the Appellant challenging the order contends that one of the question which was required to be decided in the insolvency process was the rate of interest which was entitled to be charged against the Corporate Debtor i.e. whether the rate of interest of 14.85% or the interest of 22%. It is submitted that the Adjudicating Authority has not yet decided the said issue. Learned counsel for the Appellant submitted that the Resolution Professional himself has filed an application i.e. MA No. 2886/2019 seeking determination of rate of

interest which application is still pending. The Appellant has also filed an I.A. before the Adjudicating Authority on 13.10.2022 being I.A. No. 3114/2022 seeking compliance of order dated 31.05.2019 passed by the Adjudicating Authority. Both the above applications are still pending and the Resolution Professional has submitted updated list of creditors which have been taken on record. Learned counsel for the Appellant submitted that in absence of determination regarding the rate of interest which results in determination of the claims of the Financial Creditors, the Adjudicating Authority ought not to have been taken on record the list of creditors. It is submitted by Shri Ganda that the Hon'ble Supreme Court by its order dated 03.01.2019 in "*Special Leave Petition No. 31575 of 2018, Asset Reconstruction Company (India) Ltd. vs. Tulip Star Hotels Ltd. & Ors.*" has directed the Debts Recovery Tribunal to decide on the appropriate rate of interest after hearing the parties. Learned counsel for the Appellant has also relied on the judgment of Bombay High Court dated 19.10.2018 in "*Writ Petition No. 904/2018, Asset Reconstruction Company (India) Ltd. vs. V. Hotels Ltd. & Ors.*" which according to him have bearing.

4. Shri Arun Kathpalia, learned senior counsel appearing for the Resolution Professional submits that the order passed by the Adjudicating Authority dated 31.05.2019 has been fully complied by the Resolution Professional. The Resolution Professional has verified the rate of interest and submitted a report on 18.10.2019 verifying the rate of interest as 22%. It is submitted that the Resolution Professional has filed the list of creditors as per the rate of interest verified by the Resolution Professional. It is

submitted by Shri Kathpalia the Resolution Professional has carried out his obligations. He has filed I.A. 2886/2019 seeking determination of rate of interest by the Adjudicating Authority which is still pending.

5. Shri Ramji Srinivasan, learned senior counsel appearing for ARCIL submitted that although the ARCIL who is the Financial Creditor is necessary party but the Appellant has deliberately not impleaded it. Thus, the ARCIL has right to raise all pleas regarding rate of interest.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. The order dated 08.12.2022 which is sought to be challenged in this Appeal is as follows:

**“ORDER**

*The matter is taken up through Virtual Hearing (VC).*

***IA 3727/2022- The present application is filed by the Resolution Professional to place on record the updated list of creditors along with the reconstituted COC in terms of Section 25 of the Code r/w Regulation 13 of the CIRP Regulations taken on record. Accordingly, IA 3727/2022 is allowed and disposed of.”***

8. The order dated 08.12.2022 on the face of it appear to be innocuous and the Adjudicating Authority has only taken on record the updated list of creditors which was submitted by the Resolution Professional. The

question which is sought to be raised in this Appeal is that updated list of creditors has been taken on record but no determination has been made by the Adjudicating Authority of the rate of interest on which the Financial Creditor can peg his claim. In Para 40 of the order dated 31.05.2019 admitting Section 7 Application following observations have been made by the Adjudicating Authority:

*“40. Considering the discussion made herein above, it is necessary to direct the IRP, now appointed, to ascertain the correct amount of debt by giving due credit of the amount either paid by the Corporate Debtor or adjusted by the Financial Creditor. The IRP shall give due credit of all the payments received so far, against the outstanding debt amount. In this case, it has also been informed that the payments made by the Corporate Debtor had been adjusted against the interest that too at a rate of 22% instead of applying the formula of adjustment of interest partly towards principal amount and partly towards interest amount. Further, in respect of the question of rate of interest whether 22% can be treated an exorbitant rate or the view of the DRT of charging 14.85% interest, is to be decided by this Bench on filing complete information by the RP. Hence, at present charging of interest shall remain open for due adjudication by this Bench.”*

9. In view of the Para 40 of the order of the Adjudicating Authority, it is clear that the Adjudicating Authority has to determine the rate of interest.

On the application I.A. No. 2886/2019, the Adjudicating Authority has issued some directions including direction dated 17.09.2019 to the Resolution Professional to collate the information in respect of the right to interest and place it on record. In the Status Report filed by the Resolution Professional, the report submitted by the Resolution Professional vide additional affidavit dated 18.10.2019 has been brought on record. In Para 11 of the report of the Resolution Professional following has been stated:

*“11. In light of the above, having reviewed the various orders of the Hon'ble DRT, DRAT, the High Court and the Supreme Court, and the agreements and deeds executed between the Financial Creditor and the Corporate Debtor I submit that, the contractual rate of interest to be charged on the financial debt of the Financial Creditor is duly verified as 22% p.a. and the list of creditors has been updated to reflect the same and the committee of creditors has been reconstituted on the basis of the same. The verification of the claims of the Financial Creditor shall be subject to any further orders of this Hon'ble Tribunal. A copy of the updated list of creditors is attached herewith as **Exhibit I.**”*

10. The Status Report also indicate that the CIRP process is in advance stage and the Resolution Plans are at the final stage. We although are of the view that order which is impugned in the Appeal needs no interference

in this Appeal, however, looking to the facts of the case especially the order of the Adjudicating Authority dated 31.05.2019 Para 40, as extracted above, it is for the Adjudicating Authority to decide the rate of interest. Further, application I.A. 2886/2019 filed by the Resolution Professional for such determination is pending consideration and further application I.A. No. 3114/2022 filed by the Appellant is also pending consideration.

11. We are of the view that the Adjudicating Authority should determine the rate of interest as per its order dated 31.05.2019 before any Resolution Plan reaches at the stage of approval. Determination of rate of interest having bearing on the total claims of the Financial Creditors, the Adjudicating Authority should make a decision regarding the above before any Resolution Plan is approved. The order impugned dated 08.12.2022 is not interfered with, but the said order shall be subject to any order passed by the Adjudicating Authority as indicated above. We dispose of the Appeal accordingly.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**2<sup>nd</sup> February, 2023**

*Archana*