
(2025) 10 NCLAT CK 0049

In the National Company Law Appellate Tribunal

Case No : I.A No. 4091 of 2025 in Company Appeal (AT) (Ins.) No. 296 of 2024, I.A No. 4092 of 2025 in Company Appeal (AT) (Ins) No. 295 of 2024, I.A No. 4093 of 2025 in Company Appeal T) (Ins) No. 298 of 2024

Rohit Kumar

APPELLANT

Vs

Yogesh Gupta & Anr.

RESPONDENT

Date of Decision : 28-10-2025

Acts Referred:

Citation : (2025) 10 NCLAT CK 0049

Hon'ble Judges : Faiz Alam Khan, Member; Naresh Salecha, Member, Indevar Pandey, Member

Bench : Full Bench

Advocate : Nikhil Verma, Mahak Agarwal , Kapil Sharma

Final Decision : Dismissed

Judgement

28.10.2025: Heard Shri Rajiv Ranjan, Ld. Sr. Counsel for the applicant as well as Shri Sumesh Dhawan for Respondent No. 1, Mr. Dhanananjaya Mishra, Advocate for Respondent No. 2 and perused the record.

2. Keeping in view the fact that above mentioned applications are moved requesting to clarify the common judgment dated 18.12.2024 passed by this appellate tribunal in CA (AT) (Ins) No. 296 of 2024, Rohit Kumar vs. Yogesh Gupta & Anr., CA (AT) (Ins) No. 295 of 2024, Sanjeeb Kumar Jha vs. Yogesh Gupta & Anr., CA (AT) (Ins) No. 298 of 2024, Arun Kumar Bag vs. Yogesh Gupta & Anr. All three applications are being disposed off by passing their common order.

3. The instant applications on behalf of the applicants/appellants have been moved seeking clarification of the Judgment and order of this Appellate Tribunal dated 18.12.2024, in terms of the order dated 23.05.2025 passed by the Hon'ble Supreme Court in Civil appeal (D) No. 8422 of 2025 for the following prayers:

"a) Clarify that the remand directed vide judgment dated 18.12.2024, is an open remand and that the Appellant can raise all issues as pleaded and prayed for in IA No. 1646 of 2022?

b) Clarify that in view of the remand directed by the Ld. Tribunal, the Ld. Adjudicating Authority is required to reconsider the challenge to the IRP's unilateral rejection of an already-admitted claim, and his actions to prevent the Financial Creditor, the Applicant herein, to vote and participate in the CoC meeting and parties are allowed to raise all issues afresh.

c) Clarify that the reconstitution of the CoC by the RP with Operational Creditors as recorded in para 52 of the judgment and order dated 18.12.2024 is set aside in view of the remand of IA No. 1646 of 2022 vide the judgment and order dated 18.12.2024.

d) Clarify that the remand permits a de novo consideration of the Appellant's claim by the Ld. NCLT, and it is not bound by this Hon'ble Tribunal's observations and findings on merits of the claims of the Appellant herein.

e) Clarify that the observations and findings of this Hon'ble Tribunal are merely obiter in nature, and therefore, the same shall not be relied upon by the parties during the consideration and the Ld. NCLT shall adjudicate IA no. 1646 of 2022 afresh without being influenced by this Hon'ble Tribunal's judgment dated 18.12.2024.

f) Clarify the legal authority of the IRP under the Insolvency and Bankruptcy Code, 2016 and the CIRP Regulations to reverse or revoke a previously admitted and verified claim, which had already been recorded with the IBBI, and that the IRP cannot exclude a creditor from participating in CoC meetings without obtaining prior leave or directions from the Adjudicating Authority;

g) Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice, equity, and fair adjudication".

4. Brief facts necessary for the disposal of this application are that applicants in these applications were the appellants in CA (AT) (Ins) No. 296 of 2024, CA (AT) (Ins) No. 295 of 2024, CA (AT) (Ins) No. 298 of 2024. They claimed themselves to be the financial creditors of the corporate debtor and after the public announcement of the CIRP made on 10.11.2022, to invite claims against the CD, applicants/appellants herein have filed their claims in Form C as financial creditors and their claim were also duly acknowledged and verified by the RP and accordingly they were admitted as financial creditors and were included in the CoC of the CD.

5. The appellants were initially permitted to participate in the meeting of the CoC of the CD held on 27.11.2022, however, they were subsequently removed and denied opportunity to remain present in the CoC meetings.

6. Aggrieved by the action of the RP the appellants have moved IA Nos. 1646/KB/2022, 1645/KB/2022, 1647/KB/2022 before the Adjudicating Authority against the action of RP and the Adjudicating Authority by passing order dated 19.01.2024 directed the RP to re-examine the appellant's claims and aggrieved by the said orders the aforesaid appeals were preferred by the applicants which were disposed of by this appellate tribunal by passing common judgment dated 18.12.2024. The relevant part of the said judgment is reproduced as under:

"49. We note that the Adjudicating Authority has only directed the Respondent No. 1 to re-examine the constitution of the CoC in accordance with the Code and Regulations.

50. We do not find any illegality of this action of the Adjudicating Authority in the Impugned Order. We also do not find the merit of the Appellants in their Appeals for their alleged rights to be member of the CoC. We feel that it has to be done after satisfaction of the Resolution Professional, the Respondent No. Therein as well as the Adjudicating Authority.

51. We note that vide the Impugned Order dated 19.01.2024, the Adjudicating Authority directed the Respondent N. 1 to reconstitute the CoC, if required, in accordance with law after holding that CoC was constituted on 28.11.2022.

52. It has been brought to our notice that pursuant the Impugned Order, the Respondent No. 1 issue letter dated 25.01.2024 to the Appellants cancelling the provisional membership of the Appellants in the CoC of the Corporate Debtor. It has also been brought to our notice that subsequently, the Respondent No. 1 has also reconstituted the CoC of the Corporate Debtor comprises of Operational Creditor and Respondent No. 2, the J.N Hotels Pvt. Ltd. who has been inducted as member of the CoC having 97.02% of the voting shares along with other employees of the Corporate Debtor in terms of Regulation 16 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

53. Since, the Impugned Order only talks about re-examination and reconstitution of the CoC by the Respondent No. 1 and has to take final decision in this regard. we will not examine the merit of such actions. We are not expressing any opinion on this and leave it to the Adjudicating Authority to decide the same in accordance with law.

54. We note that during haring on 13.08.2024, the Appellants alleged that the Resolution Professional has claimed CIRP cost of Rs. 1,57,52,440/- and the Appellants tried to give a picture as if the money has been largely spent as legal fee and for ulterior motives of the Resolution Professional. In this connection, we asked the Resolution Professional to file an affidavit regarding utilisation of the said money, which was filed by Yogesh Gupta, the Respondent No. 1 (IRP) on 19.08.2024, where he gave details of the CIRP cost of Rs. 1.57 Crores (approx.) for the period from 31.10.2022 to 31.12.2023 (14 months) and submitted that such cost was incurred for the Corporate Debtor to keep the Corporate Debtor as a going concern which was operating gym. The money was spent in payment of

salary to all 28 employees including the payment towards PF, ESI, payment of electricity charges, payment of advocates fee, payment of security services, royalty to Gold Gym from whom franchise has been taken by the Corporate Debtor fuel expenses, etc. The Resolution Professional has also submitted that he charge fee of Rs. 1.5 Lakh per month plus GST, which was duly approved by the CoC. We will not go further in the merit of the CIRP cost incurred by the Respondent No. 1 and we leave it to the CoC to decide the same.

55. In fine, all three appeals devoid of any merit fail, stand rejected. No costs. I.A. if any, are closed. The original petition i.e., I. A. No's. 1645, 1646, 1647 of 2022 in Company Petition No. (IB)- 1067 (KB)/2019 are remanded back to the Adjudicating Authority. We direct all the concerned parties to appear before the Adjudicating Authority for further necessary action on 08.01.2025 (Wednesday).

7. The aforesaid judgment was assailed by the appellants before Hon'ble Supreme Court by filing Civil Appeal (D) 8422 of 2025 and Hon'ble Supreme Court was pleased to dispose of the same by passing order dated 23.05.2025. The order of the Hon'ble Supreme Court is also placed below for convenience

"Delay in refiling is condoned.

We dispose of this Civil Appeal by reserving liberty to the appellant herein to move the National Company Law Appellate Tribunal for any clarification that may be sought for by the appellant herein.

It is needless to observe that if any clarification of the impugned order is sought for by the appellant herein, the same shall be considered on its own merits and in accordance with law.

Pending application(s), if any, shall stand disposed of".

8. In this background and under the orders of the Hon'ble Supreme Court the instant clarification applications have been moved by the applicants/appellants requesting to clarify the order dated 18.12.2024 passed by this tribunal and for grant of prayers mentioned herein before.

9. Ld. Sr. Counsel appearing for the appellant, while drawing our attention towards paragraph no. 50 and 55 of the Judgment passed by this Appellate Tribunal submits that this Tribunal had remanded the applications filed by the applicant to the adjudicating authority for considering it afresh while rejecting the appeals filed by the appellants, however in para no. 50 of the said judgment it has been recorded that this tribunal do not find the merit of the appellants in their appeals for their alleged rights to be member of the CoC. According to Ld. Sr. Counsel for the appellant these findings are contradictory and prejudiced to the applicants/appellants and thus the order be clarified in terms that all issues would be open to the parties before adjudicating authority.

10. Ld. Counsel for the Respondents however are of the view that in the guise of clarification application a review application has been moved by the applicant

which is not permissible. In this regard attention of this Bench was drawn towards the various reliefs claimed by the appellant in his clarification application.

11. Ld. Counsel for the Respondent No. 2 while relying on the law laid down by the Hon'ble Supreme Court in 'Ajay kumar Jain vs. State of Uttar Pradesh and Anr.', 2024 SCC Online SC 3677' submits that any application for clarification or of any other nature with regard to the judgment already passed could only be moved on the limited grounds of arithmetical or clerical mistakes and since in the appeal preferred by the applicants the order of this tribunal has not been interfered by Hon'ble Supreme Court the applicant may not be allowed to re-agitate the same grounds before this appellate tribunal which were taken before Hon'ble Supreme Court and therefore the applications moved by the applicants are not maintainable and liable to be rejected.

12. While confronted with various prayers claimed by the applicants which in our considered opinion would be of the nature of seeking review, Ld. Sr. Counsel appearing for the applicants submit that he is 'not pressing' the other reliefs claimed in the clarification applications and he is confining his submissions only pertaining to the limited prayer with regard to the observation of this appellate tribunal made in para no. 50 of the judgment wherein this appellate tribunal has recorded that no merit is found in the appeals with regard to the alleged rights of the appellant to become the member of the CoC.

13. Having considered all the facts and circumstances of the case and having perused the order dated 23.05.2025 of the Hon'ble Supreme Court passed in Civil Appeal (D) 8422 of 2025, we notice that while not interfering in the judgment passed by this Tribunal the appeal preferred by the applicant before the Hon'ble Supreme Court was disposed of by reserving liberty to the applicants to move this appellate tribunal for any clarification with consequential direction that if any clarification in the order is sought by the applicant the same shall be considered by this appellate tribunal on its own merits and in accordance with law.

14. Keeping in view the various reliefs/prayers claimed by the applicants in their clarification applications, we are of the considered view that if we proceed to consider these prayers the same would result in re-writing the judgment already passed by this Appellate Tribunal and not interfered by the Hon'ble Supreme Court. Therefore, keeping in view the prayers claimed, by the applicant's instant applications appear to be applications for review of the judgment passed by this Appellate Tribunal and these applications as they are may not be termed as clarification applications and in the guise of clarification applications applicants have moved review applications. Needless to say that this appellate tribunal is not having jurisdiction to review its own judgment.

15. Coming to the fact that the Ld. Sr. Counsel for the appellant during the course of submissions has emphasized to clarify the observation of this Appellate Tribunal made in para no. 50 of the judgment, we are of the firm view that the

observations made by this Appellate Tribunal in para no. 50 of the said judgment are with regard to the prayers claimed by the applicants in the appeals filed by them and therefore, these observations are clear and self-explanatory and do not require any further clarification and in view of the judgment passed by this appellate tribunal it would be obligatory for the Ld. Adjudicating Authority to take an appropriate decision while disposing of the IA No. 1646/KB/2022, 1645/KB/2022, 1647/KB/2022 preferred by the applicants after providing them an opportunity of being heard, strictly in accordance with law.

16. Keeping in view all the facts and circumstances, of this case and also having an eye on the order passed by Hon'ble Supreme Court we do not find any merits in these clarification applications moved by the applicants and the same are hereby dismissed as such. No order as to costs.