

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) No. 118 of 2021

In the matter of:

Sonia Khosla & Anr.

....Appellants

Vs.

Montreaux Resorts (P) Ltd. & Ors.

...Respondents

For Appellant: Mr. Deepak Khosla, Advocate

For Respondent: Mr. Jay Salva, Senior Advocate with Mr. Anand M
Mishra, Advocate for R2-4.
Mr. Rishi Sood, Advocate for R5.

Comp. App. (AT) No. 119 of 2021

In the matter of:

Montreaux Resorts (P) Ltd.

....Appellant

Vs.

Ascot Hotels & Resorts Ltd. & Ors.

...Respondents

For Appellant: Mr. Deepak Khosla, Advocate

For Respondent: Mr. Jay Salva, Senior Advocate with Mr. Anand M
Mishra, Advocate for R2-4.
Mr. Rishi Sood, Advocate for R5.

J U D G M E N T
(04th July, 2022)

Ashok Bhushan, J.

1. These two Appeals have been filed against common order dated 02.09.2021 passed in CP- 54/ND/2021 and CP- 144/ND/2016. The Applicant of both the Company Petitions aggrieved by the order dated 02.09.2021 has come up in these Appeals. We need to notice only few facts for deciding these two Appeals. Company Petition No. 114 of 2007 was filed by Mrs. Sonia Khosla

under Sections 397, 398, 402 and 403 of the Companies Act, 1956 before the erstwhile Company Law Board, New Delhi. CA No. 47 of 2016 being an application for amendment of pleadings was allowed by the NCLT with liberty to withdraw the CP No. 114 of 2007 and re-file the same with incorporation of the amended and updated facts. After withdrawal of CP No. 114 of 2007 and re-filing after incorporating amendment, Company Petition was numbered as CP No. 54/ND/2021 in which CP order dated 02.09.2021 was passed, giving rise to Company Appeal (AT) No. 118 of 2021. Company Petition No. 144/2016 filed by M/s. Montreaux Resorts Pvt. Ltd. & Ors. was also proceeded with the NCLT. There has been an order dated 08.05.2014 passed by the Hon'ble Supreme Court in Special Leave Petition (Criminal) No. 6873 of 2010 with SLP (C) No. 23796-23798/2010 wherein the Hon'ble Supreme Court vide its judgment dated 08.05.2014 directed the Company Law Board to decide Company Petition No. 114 of 2007 within a period of six months from the date of receiving a copy of this order. Other directions were also issued. In the Appeal, reference has also been made to the order dated 02.07.2019 passed by this Tribunal where this Tribunal had directed the NCLT to dispose of the CP No. 114/2007 on merit on an early date or preferably within three months. As notice above, CA No. 47/C-III/ND/2016 was filed in Company Petition No. 114 of 2007 seeking liberty to withdraw the Company Petition and file it afresh after correcting the same within three days of the withdrawal. The NCLT had allowed the prayer (1) in CA No. 47/C-III/ND/2016. CP No. 54/ND/2021 was filed under Sections 241-242 of the Companies Act, 2013 after they were allowed to withdraw the Company Petition filed in the year 2007. Both Company Petitions CP No. 54/ND/2021 and CP No. 144/ND/2016 along with

CA No. 60/ND/2021 and CA No. 18/ND/2019 came before Special Bench consisting of Sh. Bhaskara Pantula Mohan, Acting President and Shri Narender Kumar Bhola, Member (Technical) on 02.09.2021 and on which date, following order was passed:-

“As both the members of this Bench have recused to take up these matters. These matters have to be posted before any other Bench at Delhi but most of the Judicial Members at Delhi are not inclined to take up these matters. For want of time, we have no other option but to post the same before Chandigarh Bench, which is relatively nearer to the petitioner in the matter.

We transfer the files to Chandigarh Bench at the earliest possible time. Chandigarh Bench according to its own convenience will fix the date of hearing.”

2. Aggrieved by the order dated 02.09.2021, these two Appeals have been filed.

3. Shri Deepak Khosla, Learned Counsel appearing for the Appellants submits that the order dated 02.09.2021 passed by the Special Bench of the NCLT, New Delhi is nullity. It is submitted that the order is discriminatory and arbitrary to the extent that orders transfer the petition to a different Bench outside Delhi whereas both the Appellants and the Respondents are based at Delhi. It is submitted that the reason for transfer of the Company Petitions is want of time whereas fresh Applications are being entertained by the Principal Bench and other Benches at New Delhi. It is further submitted that the power to transfer a matter by virtue of Section 16(d) of the NCLT Rules, 2016 is vested

with the President. It is further submitted that there has been order of this Appellate Tribunal dated 02.07.2019 by which direction was issued to decide the Company Petition within three months and by transfer of the matter to Chandigarh Bench expeditious disposal is defeated.

4. Shri Jay Salva, Learned Senior Counsel appearing for the Respondent Nos. 2 to 4 submits that due to the order dated 31.05.2021 passed in CA No. 553/2020 in CP No. 144/2016, CP No. 144/2016 is not pending, hence, no useful purpose shall be served for issuing any direction in these Appeals. Learned Senior Counsel for the Respondent Nos. 2 to 4 has relied on the judgment dated 31.05.2021 in CA No. 553/2020 in CP No. 144/2016 as well as order passed by this Tribunal dated 28.02.2022 in Company Appeal (AT) No. 31 of 2022, 32 of 2022 and 33 of 2022.

5. Before proceeding further, we may notice that this Tribunal by its order dated 05.10.2021 passed in these two Appeals has stayed the operation of the order dated 02.09.2021. Paragraph 4 of the order dated 05.10.2021 is as follows:-

“4. In the meanwhile, the operation of the Impugned order dated 02.09.2021 passed by National Company Law Tribunal, Special Bench, New Delhi in CP-54/ND/2021 and also the operation of the Impugned Order dated 02.09.2021 passed by National Company Law Tribunal, Special Bench, New Delhi in CP-144/ND/2016 shall remain stayed till the next date of hearing.”

6. The above interim order is in operation.

7. We have considered the submissions of the Learned Counsel for the parties and perused the record. The impugned order dated 02.09.2021 as

extracted above notices in the very first line of the order “As both the members of this Bench have recused to take up these matters”. Thus, both the Members have recorded that they have recused to take up these matters. Further reason mentioned is that the matters have to be posted before any other Bench at Delhi but since most of the Judicial Members at Delhi are not inclined to take up these matters, the matter was directed to be posted before Chandigarh Bench.

8. We have carefully perused the order dated 02.09.2021. When both the Members have recused to take up these matters, both the Company Petitions ought to have been placed before the Hon’ble Acting President/ President on administrative side for posting the CPs before the appropriate Bench. Rule 16 of the NCLT Rules, 2016 deals with “Functions of the President”. Rule 16 is as follows:-

“16. Functions of the President.- In addition to the general powers provided in the Act and in these rules the President shall exercise the following powers, namely:-

(a) preside over the consideration of cases by the Tribunal;

(b) direct the Registry in the performance of its functions;

(c) prepare an annual report on the activities of the Tribunal;

(d) transfer any case from one Bench to other Bench when the circumstances so warrant;

(e) to withdraw the work or case from the court of a member.

(f) perform the functions entrusted to the President under these rules and such other powers as may be

relevant to carry out his duties as head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members, Registrar, Secretary and other staff of the Tribunal.”

9. The order dated 02.09.2021 has been passed on a judicial side for transferring the matter to the Chandigarh Bench. In an appropriate case there may be valid reason to pass a judicial order by a Bench for posting any matter before another Bench but in the facts of the present case, when both the members of the Bench have recused themselves from taking the matter, they ought not to have passed an order of transferring the Company Petitions to Chandigarh Bench. The correct course open for the Bench was to direct the matter to be placed before Acting President or President for passing an appropriate order. The word ‘recused’ has been defined in P Ramanatha Aiyar, Advanced Law Lex icon, 6th Edition in following manner:-

*“**Recuse.** To disqualify oneself from participating in a case because of some real or apparent bias or conflict of interest that might reasonably lead someone to question a judge’s impartiality and detachment.”*

10. When members have recused themselves from dealing with the matters, they ought to have directed only for placing the matter before the Acting President or President for passing appropriate order for assignment or transfer. After recusing themselves from the matter, the order for transferring the matters to the Chandigarh Bench ought not to have been passed. We, thus are of the view that the order dated 02.09.2021 transferring both the CP- 54/ND/2021 and CP- 144/ND/2016 cannot be sustained and are hereby set aside. We further direct that CP- 54/ND/2021 and CP- 144/ND/2016 be placed before the President for exercising its jurisdiction as conferred under

Rule 16(d) of the NCLT Rules, 2016 for passing an appropriate order for hearing of both the CPs.

11. A question may be asked as to when Acting President who was Member of the Bench has recused himself in the above two Company Petitions, whether on the administrative side the Acting President can pass an order exercising its jurisdiction under Rule 16(d). The power given to the President under Rule 16 is statutory power which as rule of necessity has to be exercised by the President, even though on judicial side the President/ Acting President has recused himself. Further the Acting President who has recused in order dated 02.09.2021 is not the President as on date.

12. We are not expressing any opinion as to whether both the CPs are to be heard at the Principal Bench or any other Bench at New Delhi or to be transferred at any other Bench. It is for the President to consider all aspects of the matter and take appropriate decision.

13. We may at this stage also notice the submission of the Counsel for the Respondent Nos. 2 to 4 that in view of the order dated 31.05.2021 passed in CA No. 553/2020 in CP No. 144/2016, the CP no longer survive to be adjudicated. We have noticed that against the order dated 31.05.2021, Appeals have already been filed before this Tribunal which is pending consideration. Further the Appellants have brought on record copy of CA 297/2021 filed before the NCLT in CP 144 of 2016 which is said to be pending consideration. We do not accept the above submission of Shri Jay Salva, Learned Senior Counsel for Respondent Nos. 2 to 4.

14. In result, we partly allow these Appeals, set aside the impugned order dated 02.09.2021 and remit the matter to the Hon'ble President of the NCLT to pass appropriate orders in exercise of its jurisdiction under Rule 16(d) of the NCLT Rules, 2016 for hearing, in accordance with law. It goes without saying that President shall be fully entitled to take into consideration any subsequent order passed by NCLT or NCLAT which may have bearing on CP 54/ND/2021 and CP 144/ND/2016. As observed above, we have not expressed any opinion on merits and Hon'ble President of the NCLT shall pass appropriate orders in accordance with law.



**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

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

Anjali/nn