

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD SPECIAL BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
24-03-2022 AT 02:30 P.M. THROUGH VIDEO CONFERENCE.

**IA (IBC) 764/2021, IA (IBC) 723, 455/2021 &
IA (IBC) 184, 185/2022 in
CP (IB) No. 599/7/HDB/2019
U/s 7 of IBC, 2016**

IN THE MATTER OF:

Punjab National Bank

...Financial Creditor

Vs

Saptarishi Hotels Pvt Ltd

...Corporate Debtor

C O R A M: -

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
DR BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA No.764/2021

Orders pronounced in IA No.764/2021 vide separate orders.

IA No.723/2021

Learned counsel Shri Suraj Prakash, for applicant is appeared via video conference.

Learned RP Shri T.S.N Raja, appeared in person.

Heard them. Oral arguments concluded.

At request of both sides, two weeks' time is granted for filing written submissions.

List the matter for orders on 25.04.2022.

IA'S 184&185/2022, in IA No.455/2021 are filed by the promoters for dismissing the IA No.455/2021 and for producing some documents.



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**IA (IBC) 764/2021, IA (IBC) 723, 455/2021 &
IA (IBC) 184, 185/2022 in
CP (IB) No. 599/7/HDB/2019
U/s 7 of IBC, 2016**

Counters are filed in both these IA's.
List for IA's for hearing on 11.04.2022.


IA No.455/2021


This application is filed by the RP under Section 66 of IBC. It is observed that pleadings are already completed.

Heard learned counsel Shri Amir Bavani, for RP, learned RP and Learned Counsel Shri Suraj Prakash for Resondent via video conference.

At request of both sides, two weeks' time is granted for filing written submissions.

List the matter for orders on 25.04.2022.


MEMBER (T)


MEMBER (J)

Pavani

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

IA NO. 764 OF 2021
IN
CP (IB) NO. 599/7/HDB/2019

APPLICATION UNDER SECTION 60 (5) OF IBC, 2016 R/W RULES 11
AND 49(2) OF NCLT RULES, 2016

IN THE MATTER OF SAPTARSHI HOTELS PRIVATE LIMITED

Filed by

Mr. Laxmi Narayan Sharma
Flat No. 904, Tower 1, Block A
NCC Urban Gardenia
HITEC City Main Road
Madhapur K.V. Rangareddy
Telangana – 500081

....Applicant

VERSUS

MR. T.S.N. Raja
Resolution Professional
Survey No. 91, NITHM Premises
Telecom Nagar, Gachibowli
Hyderabad – 500032

....Respondent

Date of order: 24.03.2022

Coram:

Dr.N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)



Appearance:

For Applicant : Shri Suraj Prakash, Advocate
For Respondent : Shri Amir Bavani, Advocate

PER BENCH

ORDER

1. The Applicant herein who is the promoter, shareholder and Suspended Director of the Corporate Debtor i.e. Saptarishi Hotels Private Ltd (SHPL) has filed this application, praying for setting aside order dated 14.07.2021 passed by the Tribunal in IA No. 326/2021, inter-alia, contending that the order has been passed ex-parte and in violation of principles of natural justice.
2. To put concisely, this Tribunal vide order dated 18.01.2021 admitted company petition CP(IB) No. 599//HDB/2019 filed by Financial Creditor Punjab National Bank and ordered Corporate Insolvency Resolution Process against the Corporate Debtor. The Respondent i.e. Mr. TSN Raja was appointed as Resolution Professional. Pursuant to admission order, the Board of Directors of SHPL were suspended and the Company is being managed by the Resolution Professional.
3. Upon taking over charge, the IRP/Resolution Professional had filed an IA bearing No. 326/2021 under Section 19(2) of IBC, seeking directions to Applicant and other Members of the Board to hand over



documents of the Corporate Debtor to the Respondent. However, it is contended by the Applicant that no notice was received by him regarding the intimation to be present for hearing, when the matter was listed on 14.07.2021 and therefore, without providing any opportunity of being heard to the Applicant, the Tribunal had passed the following order:-

“Notice to the respondent appears to be served by email. Copy of email is produced by them. No one appeared for them. Without considering the allegations against them and since the suspended management are duty bound under the law to cooperate the RP and to hand over all the documents and papers for successful completion of CIRP.

We direct them to handover required documents and papers to the RP within three days from today. In case of their failure RP may approach local police to assist the RP.

With this IA No. 326/2021 is allowed and stands disposed of”.

4. The grievance of the Applicant is that the above order was passed by the Tribunal on the date when the application filed by Respondent i.e IA 326/2021 was listed for the first time before the Tribunal, that too without issuing notice to the Applicant and without affording an opportunity to the Applicant, which according to the Applicant is in violation of the Principles of Natural Justice.
5. The Applicant emphasized the establishment of NCLT under Section 408 and further states that as per Section 424 of the Companies Act, 2013 and NCLT Rules, the Tribunal is bound to observe the

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principles of natural justice in the proceedings before it but the Tribunal failed to issue notice to the opposite party when an application or petition is presented before it by a party, as per Rule 3. The Applicant contends that had he been given a chance to defend; he would have pleaded that the registered office of SHPL is under the custody of Respondent/RP, post admission order of this Tribunal and further contends that the registered office and the documents of Corporate Debtor are already in the possession of the Resolution Professional which was specifically indicated in the 1st CoC meeting.

6. The Applicant contends that this Tribunal has no power or jurisdiction to direct the local police to assist the Resolution Professional and by passing an ex-parte order dated 14.07.2021 this Tribunal has exercised jurisdiction not vested in it by law. Thus submitting, the Ld. Counsel for the Applicant prayed the Tribunal to set aside ex-parte order dated 14.07.2021 passed in IA 326/2021.
7. Counter is filed by Resolution Professional, inter-alia contending that despite his best efforts, when the Applicant failed to provide documents as sought for by the Resolution Professional, he was constrained to file Iq No. 396/2021. The Resolution Professional had apprised the COC about the non-cooperation by the Director, in the second CoC meeting held on 08.03.2021 and the Resolution Professional was instructed by the CoC in the 6th CoC meeting held on 14.06.2021, to file an IA under Section 19(2) of IBC. The



Applicant was aware of the same as he was present at the CoC meetings. The intimation of filing of IA was sent to Applicant vide email dated 03.07.2021 by the Resolution Professional.

8. IA No. 396/2021 was listed for the first time on 14.07.2021. The Tribunal after considering the service of notice through email dated 03.07.2021, passed an order directing the Suspended Board to cooperate with the Resolution Professional. It is further contended that till date the order of the Tribunal has not been complied with.
9. The Resolution Professional citing the judgement of Hon'ble High Court of Telangana in the matter of "*Golden Jubilee Hotels Ltd vs EIH Ltd and another (CRP Nos. 4881 and 4884 of 2018)*, wherein it is held that *Section 19 of the Code of 2016 mandates that the personnel of the Corporate Debtor, its promoters or any other person associated with its management shall extend all assistance and o-operation to the interim resolution professional as may be required by him in managing the affairs of the Corporate Debtor*".
10. Further, the Resolution Professional has referred to the judgement of Hon'ble NCLAT in the matter of *Ajay Kumar vs Shree Sai Industries Pvt Ltd and Anr (Company Appeal (AT) (Insolvency) No. 616 of 2019*, wherein it has held at "*It is needless to say that if the Promoters do not cooperate and hand over the necessary documents and information, the Adjudicating Authority will take the help of Superintendent of Police of the concerned area to ensure that the*



possession of the "Corporate Debtor" and all the records are handed over to the "Resolution Professional" and, if necessary, take criminal action against the promoters".

11. It is contended that the suspended management has to follow the main aim and object of Section 19 of the Code which is to aid the smooth resolution process. It is contended that when the Tribunal passed the order without considering the allegations against the erstwhile management since co-operation by them was must and necessary not only as per provisions of the Code but also the same is in with the aim and object of the Code. The Resolution Professional had made it evident in the 2nd and 6th CoC that an application would be moved for non-cooperation by the ex-management and further submits that the Resolution Professional has the right to file an application before the Adjudicating Authority under Section 19(2) of the Code seeking certain directions to the ex-management.
12. The Resolution Professional further contends that, the Applicant despite giving assurances in the CoC meetings to provide required documents and information, instead the Resolution Professional was served with a copy of petition filed before Hon'ble High Court which goes to show that the Applicant is not interested in providing the information as sought for and therefore, the plea taken under the umbrella of natural justice deserves to be dismissed out-rightly.



13. The Resolution Professional further contends that the order in IA 326/2021 was passed on 14.07.2021 and the appeal by way of this application is filed on 27.11.2021 holds no validity as the person aggrieved by the order of the Adjudicating Authority has to prefer the appeal under Section 61 (1) before Hon'ble NCLAT within one month of the order of the Tribunal. Thus, submitting, the Ld. Resolution Professional urged the Tribunal to dismiss the application.

14. In the light of the contest as above, the point that emerges for consideration is;

“Whether order in IA No. 326/2021 dated 14.07.2021 is liable to be set aside on the ground that the Respondent therein was not heard before disposal of IA No. 326/2021”.

15. We have heard the Ld. Counsels for Applicant and Respondent, perused the record and case laws.

POINT

“Whether order in IA No. 326/2021 dated 14.07.2021 is liable to be set aside on the ground that the Respondent therein was not heard before disposal of IA No. 326/2021.

16. Alleging that, in violation of principles of natural justice, this Tribunal passed an order dated 14.07.2021, the Respondent in IA No. 326/2021, has filed this application for setting aside the order dated 14.07.2021. However, the Ld. Counsel for the Respondent in this IA,



while refuting the allegations and averments as made in the Application, firmly contended that the Applicant herein, who is Respondent in IA No. 326/2021 has been served of notice through email and as the Respondent failed to appear on 14.07.2021, this Tribunal had rightly disposed of the Application. That apart, the Ld. Counsel further contended that in the meetings of members of CoC that preceded filing of this Application, non-cooperation by Ex-Management has been discussed and the Director of the Suspended Management Mr L.N. Sharma (Applicant herein) though had assured to hand over the records and to furnish relevant information to the Resolution Professional, has failed, hence the CoC insisted the Resolution Professional, to file the present application.

17. In the light of the contest as afore-stated, it would be essential to refer to Section 19 (2) of IBC, which is as follows:-

“Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions”.

Thus, it is clear from the provision above that the Ex-Management shall be bound to co-operate with the Resolution Professional, enabling the Resolution Professional to carry out and complete the resolution process, which is time bound and in the event of non-cooperation by the Corporate Debtor, its promoters or any other





person associated with the management of Corporate Debtor, the Resolution Professional is entitled to move the Tribunal and upon filing an Application by the Resolution Professional, the Tribunal is entitled to direct such personnel or other person to comply with the instructions of the Resolution Professional and to cooperate with him in collection of information and management of the Corporate Debtor.

18. In the case on hand, the minutes of CoC meeting dated 09.03.2021 categorically discloses that the Resolution Professional had brought to the notice of the members of CoC that information such as audited financial statements of Corporate Debtor for the years 2019, 2020 and provisional balance sheet as on the Insolvency Commencement date i.e. 18.01.2021 for preparation of Information Memorandum were not furnished and the Director of the Suspended Management Shri L.N. Sharma assured that he will arrange within 3 days. However, as there was no compliance, the CoC in its next meeting dated 14.06.2021, once again took up the same issue. Pursuant thereto, Shri L.N. Sharma, the Director of Ex-Management requested for two weeks' time to furnish all the details. But, once again he defaulted in complying his own undertaking, hence the issue of non-furnishing of the records once again came up before the CoC in its meeting dated 23.07.2021.



19. In this backdrop, IA No. 326/2021 was filed and the Tribunal passed the following order on 14.07.2021.


IA No. 326/2021: This application is filed under Section 19(2) of IBC by the Resolution Professional seeking direction to the suspended management to hand over the required documents. Notice to the Respondent appears to be served by email. Copy of email is produced by them. No one appeared for them. Without considering the allegations against them and since the suspended management are duty bound under the law to cooperate the RP and to hand over all the documents and papers for successful completion of CIRP. We direct them to hand over required documents and papers to the RP within 3 days from today. In case of their failure RP may approach local police and local police may assist the RP. With this IA No. 326/2021 is allowed and stands disposed of."

20. In the case on hand, as already stated supra, the Director of the Corporate Debtor, though assured to deliver the relevant records to the IRP, never kept his undertaking. Thus, breach of sub-section (1) of Section 19 is as clear as crystal, as such it is certainly open to the IRP to make an application to the Adjudicating Authority for necessary directions. In the instant case, this Adjudicating Authority, having found proof of non-cooperation by the Ex-Management, without going into the allegations, placing reliance on sub-section (1) of Section (19), passed a direction to hand over all the records and papers to the IRP, enabling successful completion of CIRP within the timeline. In passing such an order, there is no violation of principles of natural justice. On the other hand, there is clear



violation of mandatory duty cast upon the ex-management in terms of Section 19 (1) of IBC.

21. It is strange that the Applicant, though stated in this Application that he has been cooperating with the IRP, not even a scrap of record has been filed showing compliance of any of the requests of Resolution Professional.
22. It may be stated that the procedure of adjudication under IBC recognizes sending of notices by way of emails. Here, copy of email dated 03.07.2021 filed by the Respondent discloses the Application has been sent. The Applicant has not disputed the email ID to where the notice has been served. We therefore, find no merit whatsoever in the contention of the Applicant that the impugn order was made ex-parte. The application lacks bonafide and hence deserves to be dismissed.
23. Accordingly, the Application stands dismissed. We impose cost of Rs. 10,000/- which shall be payable by Applicant to "BHARAT KOSH (NTRP) within 15 days of receipt of the copy of this order.


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Dr. N.V. Ramakrishna Badarinath)
Member (Judicial)