

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 290 of 2017

(Arising out of Order dated 17th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai in CP/597/(IB)/CB/2017]

IN THE MATTER OF:

M/s. Subasri Realty Private Limited ...Appellant

Vs.

Mr. N. Subramanian & Anr. ...Respondents

Present: For Appellant: - Shri Mohan Parasaran and Shri R.C. Paul Kanagaraj, Senior Advocates assisted by Ms. D. Revathi Karthick, Mr. Vishnu and Ms. Aditi Dani, Advocates.

For Respondents:- Mr. S. Santanam Swaminadhan and Ms. Nishita Khurana, Advocates for Respondent No.1.

Mr. Arnav, Advocate for IRP.

Mr. Senthil Jagadeesan, Shruti Iyer and Ms. Suriti Chowdhary, Advocates for Intervener.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by 'M/s. Subasri Realty Private Limited', Shareholder of 'M/s. Aruna Hotels Limited'- ('Corporate Debtor') against the order dated 17th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai, whereby and whereunder the application preferred by the Respondent- Mr.

N. Subramanian- ('Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been admitted, order of 'Moratorium' has been passed and 'Interim Resolution Professional' was appointed with certain directions.

2. The main plea taken by the Appellant is that there is an 'existence of dispute' and the claim also is barred by limitation and there is delay and laches; therefore, the application was not maintainable.

3. Learned counsel appearing on behalf of the Respondent- ('Operational Creditor') submitted that there was no 'existence of dispute' and the record in Form-5 being complete, and taking into consideration the fact that there is a debt and default, the Adjudicating Authority rightly admitted the application.

4. Admittedly, the Respondent- ('Operational Creditor') was an employee of 'M/s. Aruna Hotels Limited'- ('Corporate Debtor'). He claimed arrears in salary from 1998 to till his retirement in 2013. At the time of his last tenure, his salary was Rs. 35, 000/- per month and the difference in wages till the date of retirement claimed to be Rs. 1,87,75,631/- (Rupees One Crore Eighty Seven Lakh Seventy Five thousand Six Hundred and Thirty One Only).

5. The demand notice under Section 8(1) was issued by the Respondent- ('Operational Creditor') on 29th June, 2017 showing total debt of Rs. 1,87,75,631/- (Rupees One Crore Eighty Seven Lakh Seventy Five thousand Six Hundred and Thirty One Only). On the receipt of such notice, the

'Corporate Debtor' by reply dated 5th July, 2017 intimated as follows:



ARUNA HOTELS LIMITED

CIN: L15421TN1960PLC004255

/By RPAD/

ANNEXURE A9

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5th July 2017

To,

Mr. N. Subramanian,
No 4/33, Officers colony 1st Street,
Flat no 6 Corner Enclave,
Rajaram Metha Nagar,
Aminjikai, Chennai-600 029

Sir,

Ref: Notice dated 29.06.2017-Reg

It is true that you have worked in M/s. Aruna Hotels Limited and retired on 30.06.2013 as Assistant manager.

Our records shows that all your salary has been paid then and there without any arrears and our record shows that there is balance of gratuity to a sum of Rs. 5,85,577/- as per the approval dated 06.02.2013 by Erstwhile Managing Director.

As per the Erstwhile managing director approval dated 04/02/2013 you received increment salary from 25,000/- to 35,000/- per Month with effect from 01.02.2013.

For ARUNA HOTELS LTD.

Director

No. 144.145. Sterling Road, Nungambakkam, Chennai- 600 034.
 Ph: 044-3988 4422, Fax: 044-3041 4999. Email: arunahotelmpl@gmail.com.



ARUNA HOTELS LIMITED

CIN: L15421TN1960PLC004255

When the Management was handed over the Erstwhile Managing Director has handed over the entire Book of records and Accounts including the Creditor/Debtor List.

Whereas, Mr. Sivaram, Erstwhile Managing Director has submitted the balance sheet and Annual Report for Aruna Hotels Limited for the years 2000 onwards and the said Managing Director Mr. M. Sivaram has not given details about your salary in the annual report as per section 217 of the companies act read with the companies (particulars of the employees) rules 1975, whereby any employee who receives more than 3 lakhs as salary per year has to be stated.

But the Annual Reports signed by Mr. M. Sivaram as Erstwhile managing Director of Aruna Hotels has not shown your employment and salary details in the Annual Report as you claimed in the demand notice of salary is more than 3 Lakhs.

Further for instance the annual reports for the year 2013-2014 states, that other payables only consisting of wages/ salaries shows an outstanding of Rs. 1,08,86,000(Rupees One Crore, Eight Lakhs and Eighty Six Thousand Only) as on 31.03.2013 and Rs.1,40,74,000 (One Crore Forty Lakhs Seventy Four Thousand Only) as on 31.3.2014 but whereas your arrears of salary of Rs. 1,87,75,631 does not reflect in that Annual Report. And there by it is very clear that the letters relied on by you dated 30.09.2006, 22.1.2013,30.06.2013,31.03.2014 and 30.09.2014 issued by Mr. M. Sivaram is not authenticated and the same does not establish liability.

For ARUNA HOTELS LTD

Director

No. 144.145, Sterling Road, Nungambakkam, Chennai- 600 034.
Ph: 044-3988 4422, Fax: 044-3041 4999. Email: arunahotelmpl@gmail.com.



ARUNA HOTELS LIMITED

CIN: L15421TN1960PLC004255

In spite of it, we are inclined to consider your request if you can provide the following details,

- a) Your Bank Statement for the years 1.4.1999 to 30.06.2013
- b) Your income tax returns for the above said years.
- c) Originals copy of the letter dated 01.02.1998 to check the authenticity.
- d) Originals copy of the letter dated 30.09.2006 to check the authenticity.
- e) Originals copy of the letter dated 31.03.2014 to check the authenticity.
- f) Originals copy of the letter dated 30.09.2014 to check the authenticity.

Further in respect of your demand and the letters relied upon by you, we have issued the enclosed notice to the then Managing Director Mr. Sivaram seeking his clarification as the Annual Reports submitted by him does not correlate with the letters issued by him to you. This is for your reference and once we receive the explanation from him, a further reply shall be sent to you.

There are no documents to substantiate your claim that 10% increment was accepted for every year on the total salary except the erstwhile Managing Director's letter dated 30.09.2006. (which was not found in our records). For instance as on 01/01/2000 your salary was Rs.41,000 as per your letter dated 30.09.2006, which contradicts with the letter dated 30.06.2013 and 30.09.2014

For ARUNA HOTELS LTD.

Director

No. 144.145, Sterling Road, Nungambakkam, Chennai- 600 034.
Ph: 044-3988 4422, Fax: 044-3041 4999. Email: arunahotelmpl@gmail.com.



ARUNA HOTELS LIMITED

CIN: L15421TN1960PLC004255

Further your demand of salary arrears from 01/04/1999 up to 30.06.2013, through your letter dated 30.09.2014 was not found in our records.

Therefore, as per the approval dated 06.02.2013 by Erstwhile Managing Director you are entitled to receive only Rs. 5,85,577/- as per our records.

Therefore we kindly request you to provide the above said documents so that we can verify and check the authenticity of the documents and revert back.

Thank you!

For ARUNA HOTELS LTD.,

Director

Director.

Enclosure:

- 1) Letter to Mr. Sivaram dated 05.07.2017

No. 144,145, Sterling Road, Nungambakkam, Chennai- 600 034.
Ph: 044-3988 4422, Fax: 044-3041 4999. Email: arunahotelmpl@gmail.com.

6. From the aforesaid letter, it is clear that the Respondent- ('Operational Creditor') was working with the 'Corporate Debtor' and retired on 1st February, 2013, when the 'Corporate Debtor' was under the control of erstwhile management. After takeover by present management, on the basis of record the 'Corporate Debtor' intimated the Respondent that nothing was due except the gratuity amount. It was brought to our notice that the 'Employees Provident Fund Organisation', Chennai by letter dated 13th April, 2016 intimated the 'Corporate Debtor' that the claim of the Respondent- ('Operational Creditor') has already settled which is as follows:

"EMPLOYEES PROVIDENT FUND ORGANISATION
NO. 37, ROYAPETTAH HIGH ROAD,
OPPOSITE SWAGAT HOTEL, CHENNAI
TAMIL NADU, 600014

Region: CHENNAI

Office: CHENNAI

No: TN/XAS/145/REJECTION/

Dated: 13/04/2016

To

ARUNA HOTELS LTD.
"ARUNA CENTRE" 745, STERLING ROAD,
CEHNNAI, 685
TAMIL NADU, 600034

Ref. No. Claim ID: TNMAS160300026845/ Member ID:
TNMAS00056010000000136

Sub: Rejection of Claim ID: TNMAS160300026845 DATED 22/03/2016

Sir/Madam,

Your above mentioned claim Form 19 pertaining to Mr/Mrs/Km N. SUBRAMANIAN having A/C no. TN/MAS/0005601/000/0000136 under the EPF Scheme has been rejected/returned due to the following reason(s).

CLAIM ALREADY SETTLED

Initiator's Remarks: CLAIM ALREADY SETTLED

Note: - In case the return/rejection if for any additional information/document, the claim may be resubmitted after rectifying the discrepancies noted above.

Enclosure: - Claim Form-19

Task ID: 14502

Yours Faithfully,

Copy to :- N. SUBRAMAIAAN

AO/APFC"

7. The Respondent- ('Operational Creditor') himself has pleaded that the salary is due since 1998 which was not paid but delay of raising claim of arrears of salary for the period 1998 to 2016 has not been explained.

8. The Hon'ble Supreme Court in **"Innoventive Industries Ltd Vs. ICICI Bank— 2017 SCC OnLine SC 1025"** while explaining the provisions of Section 9 observed as follows:

"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing- i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code."

9. In the present case as we find that there is an 'existence of dispute' about arrears of salary and the Respondent has also failed to explain the delay in making claim of arrears alleged to be done since 1998 to 2016 (delay of about 18 years), we hold that the application under Section 9 preferred by the Respondent was not maintainable.

10. For the reasons aforesaid, we set aside the impugned order dated 17th November, 2017 passed by the Adjudicating Authority in CP/597/(IB)/CB/2017.

11. In effect, order (s), passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium, freezing of account, and all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the 'I&B Code' is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

12. The Adjudicating Authority will fix the fee of 'Resolution Professional', and the 'Corporate Debtor' will pay the fees of the 'Interim Resolution Professional', for the period he has functioned. The appeal is allowed with

aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

NEW DELHI

16th July, 2018

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