

**NATIONAL COMPANY LAW TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH.**

**CA No.13/2018, 17/2018, 37/2018,
55/2018, 5/2018 & 50/2018**

IN

**CP (IB) No.15/Chd/CHD/2017
(Admitted matter)**

In the matter of:

Punjab National Bank.

....Financial Creditor.

Versus.

James Hotels Ltd.

....Corporate Debtor.

Present: Mr.Yogesh Goel, Advocate for Resolution Professional with Mr.Naveet Gupta, Resolution Professional.
Mr.Anil Kumar Aggarwal, Advocate with applicant Pooja in CA No.55/2018.
Ms.D.Geetha, Advocate with Mr.Gurinderjit Singh, Advocate for applicant in CA No.17/2018.
Mr.Vivek Sheoran, Advocate for applicant in CA No.5/2018.
Mr.Atul V.Sood, Advocate for Intervener in CA No.37/2018 and for applicant in CA No.50/2018

CA No.55/2018:

We have heard the learned counsel for the parties. The learned counsel for applicant states on instructions that the applicant would hand over the entire charge of the record as Company Secretary as well as password of the e-mail to which she had the access, sim card even if de-activated and OTP of the Bombay Stock Exchange to the Resolution Professional and Resolution Professional may be directed to take a fresh decision on her resignation. For handing over the record under videography, we appoint Mr.Sourabh Arora, Advocate, House No.916, Sector 7, Chandigarh, Mobile No.98157-97779 as the local commissioner,

who shall be present at the spot to ensure smooth handing over the charge on 17.03.2018. Applicant Pooja, Resolution Professional assisted by any member of his team and the local commissioner shall visit the premises of James Hotels Limited at 11.00 AM for the proceedings of taking over of the charge of the aforesaid record including sim card email password issued to her by the Hotel and OTP of Bombay Stock Exchange from the applicant under videography, which will be arranged by the Resolution Professional.

The fee of the local commissioner is assessed as ₹40,000/- to be borne by the Resolution Professional. The local commissioner shall send his report immediately to this Tribunal and in any case within four days from 17.03.2018. It is further directed that on taking of the charge from Pooja, the Resolution Professional shall take a fresh decision on her resignation without prejudice to the rights of the applicant to claim past arrears. This is also without prejudice to any step that may be initiated by the Resolution Professional which he deems appropriate on the basis of the information available to him. CA No.55/2018 stands disposed of.

The registry will issue notice to the local commissioner for compliance. The Resolution Professional shall be responsible for service of the Local Commissioner.

CA No.13/2018:

Arguments heard. Reserved.

CA No.05/2018:

CP (IB) No.15/Chd/CHD/2017 filed by the Punjab National Bank, Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 (for short to be referred here-in-after as the Code) was admitted by this Tribunal on 27.04.2017 declaring moratorium in terms of Section 14 (1) of the Code. Mr.Navneet Gupta was appointed as the Interim Resolution Professional (IRP) with necessary directions by an order dated 08.05.2017. The IRP was later on confirmed as Resolution Professional (RP) by the Committee of Creditors. The period of 180 days as permitted for completion of the resolution process under Section 12 (1) of the Code expired on 23.10.2017. The Resolution Professional applied for extension of the time in terms of Section 12(2) of the Code on the basis of the decision of the Committee of Creditors and by a detailed order dated 11.10.2017, the time was extended for another 90 days, which has since expired on 23.01.2018.

When the matter was listed on 16.01.2018, Resolution Professional brought to the notice of this Tribunal by moving CA No.13 of 2018 that the Hon'ble Punjab and Haryana High Court in CWP No.29583 of 2017 has passed the order dated 21.12.2017 restraining this Tribunal from passing the final order. In view of the order of the Hon'ble High Court, the Resolution Professional was directed to continue with the resolution process despite expiry of 270 days, but that aspect of the matter is still under consideration.

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The instant application has been filed by Neeraj Mohendroo son of Krishan Lal under Section 60 (5) of the Code against the Resolution Professional Mr.Navneet Gupta seeking to quash the order passed by the Resolution Professional vide which the appointment of the applicant was cancelled, claiming further relief of arrears of salary with interest and for his re-instatement as Public Relation Manager of M/s James Hotels. The applicant has also prayed for compensation.

It is stated that the applicant was issued a letter of intent dated 25.04.2017 vide which the post of Public Relation Manager of the Hotel was offered to him. He formally joined as Public Relation Manager on 11.05.2017. However, keeping his old association with the management of the Hotel, he had started working w.e.f. 25.04.2017.

Since the date of appointment of the Resolution Professional, he had been in constant touch with the applicant. The applicant had been bringing the clients to the Hotel and using his skills in making purchases of the goods for the company. Despite working so diligently he has not been paid any amount of salary. Feeling aggrieved, the applicant sent an e-mail to the RP on 20.07.2017 claiming the arrears of his salary for the months of May and June, 2017 and offered to the Resolution Professional to personally clarify any query. The services and skills of the applicant have been utilized for more than four months, but he has not been paid anything.

It is further stated that the Resolution Professional sent an e-mail to the applicant asking him to explain the circumstances under which the DIR-12 qua his resignation was signed by the Board of Directors and uploaded via id of Company Secretary of the Company. The Resolution Professional had also mentioned that the appointment of the applicant has been done without his approval.

The applicant sent reply to the said e-mail that during the resignation of the applicant from the post of independent director, the Resolution Professional was not in picture. Moreover, the date of joining of the applicant as Public Relation Manager in the company is the same as the date of appointment of Resolution Professional and therefore, the question of informing the Resolution Professional beforehand did not arise.

On 22.09.2017, the Resolution Professional declared that the Committee of Creditors has decided that the applicant cannot be an employee of the Company and resultantly on 03.10.2017 Mr.Vishesh HRM e-mailed the letter of cancellation to the applicant. Before issuing of this letter, the applicant was not granted any opportunity of hearing nor principles of natural justice have been complied. The Resolution Professional has indulged in high-handedness and harassing, threatening and coercing the old employees of the Company to resign from their posts. He has also indulged in various acts of mis-conduct and had been mis-utilizing the names of the employees in conducting illegal acts by manipulating the record of the Company.

In reply filed by the Resolution Professional, it is stated that the applicant is indulging in a larger conspiracy and working in connivance with the other suspended Board of Directors of the Corporate Debtor, namely; Mr.H.S.Arora and Mr.Bhullar. It is stated that the applicant was a director of the company before preparing his fake and fabricated resignation. The applicant being the director of the company would have been suspended as per law after the admission of the petition under Section 7 of the Code and would have also remained away from the Hotel. It was under a conspiracy that forged and fabricated sanction letters were prepared by using illegally, the digital signatures of various persons. As a part of this conspiracy, the applicant submitted his resignation from the post of director on 15.05.2017, which was redundant as the Board of Directors had already been suspended. The applicant has not pointed out the exact date on which he joined as Public Relation Manager and to whom he submitted the joining report. It is denied that the applicant ever worked for the Hotel after the appointment of Resolution Professional. In fact there was no post of Public Relation Manager in the Hotel.

The Resolution Professional has also filed Annexure R-1/2, the order dated 24.05.2017 passed by the Sole Arbitrator in arbitration proceedings arising out of the arbitration case No.76 of 2016, where the applicant Neeraj Mohendroo got his presence marked as director of the James Hotels, even though, according to him, he had already resigned in April, 2017 as director. Moreover, the petition under Section 7

of the Code had already been admitted on 27.04.2017. He could not mark his presence as a director of the Corporate Debtor. The pendency of the arbitration case was also not brought to the notice of the Resolution Professional. At page 41 of the paper book of the reply, Neeraj Mohindroo got his presence marked as per the order dated 01.08.2017 before the Sole Arbitrator, as the Director of the James Hotel.

It is stated that when the aforesaid facts came to the notice of the Resolution Professional and the Committee of Creditors, the aforesaid action was taken against the applicant. The applicant is claiming the violation of natural justice, whereas he himself committed criminal acts against the interest of the company.

The elaborate facts have been mentioned to oppose this application, but we find that there is no need to go into those detailed allegations for disposal of this application.

The applicant also filed rejoinder denying all the assertions of facts regarding his conduct as raised in the reply and the facts stated in the application are re-iterated. The facts have been again elaborately re-iterated in respect of the manner of interviewing the applicant and his ultimate appointment as HR Manager. It is also denied that the applicant ever appeared in the arbitration proceedings by representing himself as a director. It is stated that this issue has been clarified to the respondent vide e-mail dated 24.07.2017. For this, a reference is made to order dated

07.09.2017 passed by the learned Sole Arbitrator in the arbitration
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proceedings, in which the prayer of the applicant to mark his presence as a representative of M/s James Hotel instead of the Director in the orders dated 17.04.2017, 25.04.2017, 11.05.2017. 24.05.2017 and 01.08.2017 was accepted.

The applicant has also stated that his presence regularly in the Hotel can be verified from the bio metric attendance of the Hotel. There is, however, no need for a detailed reference to the other elaborate facts in view of the questions involved before this Tribunal.

We have heard the learned counsel for the applicant and the learned counsel for Resolution Professional and perused the record carefully for disposal of this application.

The learned counsel for the applicant has confined his arguments only to the legal submissions. Learned counsel referred to the provisions of Section 28 of the Code pertaining to the approval of the Committee of Creditors for certain actions. Specific reference is made to Section 28 (1) (j) of the Code. It says that notwithstanding anything contained in any other law for the time being in force, the Resolution Professional, during the corporate insolvency resolution process shall not take any action without prior approval of the Committee of Creditors namely (j) make any change in the management of the corporate debtor or its subsidiary. We are of the clear view that HR Manager would not fall within the purview of the management of the Corporate Debtor. With regard to the

changes of the personnel other than the management, clause (l) of Section

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28 (1) of the Code can be referred. It says that the Resolution Professional shall not make changes in the appointment or terms of contract of such personnel as may be specified by the Committee of Creditors. There is nothing on record to suggest that the Committee of Creditors took decision at any time to bring such restrictions to the powers of the Resolution Professional in terms of clause (I) of Section 28 (1) of the Code. In any case, the Resolution Professional has categorically stated that as soon as the Committee of Creditors came to know about the facts and circumstances of the matter, it declared that no one could be an employee of the Company in the manner the applicant has claimed. Further a declaration was made by the Committee of Creditors to the effect that the appropriate action should be taken against the applicant.

The other contention made vehemently on behalf of the applicant is that without service of the notice to the applicant or providing him opportunity of being heard, his employment cannot be terminated. This contention is based on the interpretation of clause (c) of Section 60 (5) of the Code. Section 60 (5) of the Code reads as under:

“(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

- (b) *any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*
- (c) *any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.*

16. Learned counsel tried to bring the case within the scope of clause (c) of Section 60 (5) of the Code. We are of the view that the question raised before us does not relate to or arise out of the insolvency resolution process or liquidation proceedings of the corporate debtor and therefore, cannot be brought before this Tribunal. If there are violation of principle of natural justice or termination is wrong or that salary has not been paid, the applicant may have remedy before the appropriate forum and not before this Tribunal. In case, he claims arrears of his salary, he will have to file the claim before the Resolution Professional in Form D of the Schedule to IBBI (CIRP) Regulations, 2016 for which, there is regulation No.9 (1) of the Regulations. The application in hand is totally mis-conceived and not maintainable, therefore, the same stands dismissed.

CA No.50/2018:

Learned counsel for the applicant seek and is permitted to withdraw the instant CA with liberty to avail of remedy with the appropriate forum, if so advised. CA No.50/2018 is thus disposed of as withdrawn with the liberty aforesaid.

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CA No.17/2018:

CA No.17/2018 could not be taken up due to paucity of time. List for arguments on 19.03.2018.

CA No.37/2018:

Learned counsel for the respondent submits that she has filed the reply with all the preliminary objections, but not on merits of the case with the purpose that the preliminary issue raised would be heard before taking up the application on merits. Having considered the contention, it is directed that the respondent shall file the reply to the application on merits also by the next date with copy advance to the counsel opposite, either dasti or at his e-mail address.

List the matter for arguments on 21.03.2018. In the meanwhile, the Resolution Professional shall continue with the resolution process.

Sd/-
(Justice R.P.Nagrath)
Member (Judicial)

Sd/-
(Pradeep R.Sethi)
Member (Technical)

March 13, 2018.
Ashwani