

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI**

IA/361/2021 in CP/597/IB/2017

*(Filed under Sec. 60(5) of Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of NCLT Rules, 2016)*

In the matter of **M/s. Aruna Hotels Limited**

K.N. Rajakumar
(suspended Director of Corporate Debtor)
No.145, Sterling Road,
Nungambakkam,
Chennai – 600 034

.. .. Applicant

-Vs-

V. Nagarajan, Resolution Professional
Of M/s. Aruna Hotels Limited
New No. 29, Kavarai Street,
West Mambalam,
Chennai – 600 033

& 7 Others

.. .. Respondent

Present:

For Applicant : *P.H. Aravindh Pandia, Senior Advocate*

For Respondent : *R. Subramanian, Advocate for RP*
C. Mohan, Advocate for HDFC Bank

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on 4th June 2021

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. This Application has been moved by Board of Directors of the Corporate Debtor whose powers stood suspended seeking thereof for urgent hearing of MA/6/2021.

2. Brief facts of the case are that the Corporate Debtor was ordered into CIRP by this Tribunal vide order dated 17.11.2017 passed in CP/597/IB/2017 and the Respondent viz. Mr. V. Nagarajan was appointed as the IRP. Thereafter, the IRP constituted the Committee of Creditors and the Respondent was confirmed to act as the Resolution Professional in relation to the Corporate Debtor. Aggrieved by the said order of admission, the Directors of the Corporate Debtor whose power stood suspended preferred an Appeal before the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 290 of 2017 and the Hon'ble NCLAT vide its order dated 16.07.2018 has set aside the CIRP order passed by this Tribunal.

3. Thereafter, the Operational Creditor has preferred an Appeal before the Hon'ble Supreme Court in Civil Appeal No.187 of 2019 wherein the Hon'ble Apex Court vide its order dated 03.03.2021 has

set aside the order of the Hon'ble NCLAT and upheld the order of admission passed by this Tribunal.

4. Immediately after the CIRP order was restored by the Hon'ble Supreme Court on 03.03.2021, the RP moved MA/6/2021 before this Tribunal stating that the Directors of the Corporate Debtor whose powers stood suspended were not co-operating with the RP inspite of repeated emails being sent to them. This Tribunal vide order dated 15.03.2021 granted opportunity to the Respondent to file counter in relation to the same. Subsequently when the matter came up for hearing on 22.03.2021, the Learned Senior Counsel for the Respondent submitted that the Directors of the Corporate Debtor whose powers stood suspended have filed Miscellaneous Application No. 480 of 2021 before the Hon'ble Supreme Court in which the Hon'ble Apex Court on 19.03.2021 passed the following order;

"The learned counsel for the applicant seeks leave to withdraw this application with liberty to approach the CoC for settlement under Section 12A of the IBC. With liberty as above, the application is disposed of as withdrawn."

5. Further, one of the Financial Creditors of the Corporate Debtor viz. HDFC Bank has submitted that after the dismissal order passed by the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 290 of 2017 in and by which the Corporate Debtor was released from the rigors of

CIRP, the HDFC Bank has tendered loan to the tune of Rs.36 Crore to the Corporate Debtor and that the Corporate Debtor has not committed any default in relation to repayment of the said loan.

6. However, taking into consideration the orders passed by the Supreme Court on 19.03.2021, and also the representations being made by the Learned Counsel for the Corporate Debtor, this Tribunal directed the RP to file an Affidavit in regard to the current status of the CoC members.

7. Subsequent to the above, when the said MA/6/2021 came up for hearing on 30.03.2021, this Tribunal has passed the following order;

“Ld. Counsel for the Applicant Mr. T. Sugirtha, Ld. Sr. Counsel Mr. P.H Arvindh Pandian for R1 to R5 and Ld. Counsel Mr. C. Mohan of M/s. King and Partridge for R7 are present through video conferencing mode.

As directed by this Tribunal, an affidavit along with the Memo has also been filed as reported by the Ld. Counsel for RP. The parties, viz, the Respondents are permitted to file Counter Affidavit as the statement made in the affidavit is sought to be seriously contested by the Respondents, particularly, R7. In the circumstances, two weeks’ time is granted for filing of the Counter Affidavit.

Post this matter on 22.04.2021 and in the mean while the RP is directed not to precipitate the CIRP process in view of the permission given by the Hon’ble Supreme Court in relation to consideration of Section 12A Application as may be moved by the Applicant.”

8. Thereafter, due to upsurge in Covid-19 cases at Chennai, this Tribunal was hearing only urgent matters and hence the matter was not listed for hearing on 22.04.2021. However, the Director of the Corporate Debtor whose powers stood suspended has filed an Application viz. IA/361/2021, the present Application seeking for urgent hearing of MA/6/2021 stating *inter alia* that after the direction issued by this Tribunal on 30.03.2021, the RP is seeking to constitute a revised CoC consisting of only Operational Creditors in view of the fact that the original Financial Creditors who constituted the CoC had given letters of withdrawal. Taking into consideration the said representation made by the Learned Counsel for the parties, this Tribunal has passed the following order;

“Learned Senior Counsel for Applicant, Mr. Arvinth Pandian and Learned Counsel for Respondent / RP Mr. R. Subramanian are present through video conferencing platform.

This is an Application seeking for urgent listing of MA/6/2021 in CP/597/(IB/2017 and that the same is to be heard today and not being in the urgent list as is given in the cause list today.

It is brought to the notice of this Tribunal by way of an averment in the Application along with the documents filed therewith that the Respondent / Resolution Professional is seeking for constituting a revised Committee of Creditors consisting of only Operational Creditors in view of the fact that the original Financial Creditors who constituted the CoC had given letters of withdrawal and in the circumstances it becomes incumbent for this Tribunal to take up this Application on an urgent basis.

The records filed along with the Application disclose that despite specific direction given by this Tribunal to the Resolution Professional not to precipitate the CoC, taking into consideration the order passed by the Hon'ble Supreme Court dated 19.03.2021

in Miscellaneous Application No.480/2021 in C.A. No.187/2019 in the matter of one N. Subramanian –Vs- M/s. Aruna Hotels Ltd. & Anr. for admission and IA No.37894/2021 and IA No.37900/2021, still it is seen that the RP has persisted with the constitution of the CoC and also called for a meeting of the CoC on 19.04.2021 on the presumption that since the earlier CoC had chosen to withdraw, a de novo CoC is required to be constituted.

However, we find this representation made on behalf of the RP very strange as it is required to be seen that the order passed by this Tribunal in admitting the Petition, initiating the CIRP and appointing the IRP was challenged before the Hon'ble NCLAT which chose to set aside the order passed by this Tribunal dated 17.11.2017 in CJP/597/(IB)/CB/2017.

However, the said order of the Hon'ble NCLAT came to be challenged before the Hon'ble Supreme Court, which in effect restored the order passed by this Tribunal admitting the Petition in relation to the Corporate Debtor. Hence, the proceedings viz., the legal proceedings can be considered only as a continuation of the proceedings and the date of initiation of the CIRP is required to be reckoned as the date when the order was passed by this Tribunal admitting the Petition and not thereafter.

In the circumstances, taking the same as the date of admission of the Petition and action taken by the IRP in calling for the claims, as provided under Section 15 of IBC, 2016 and in case Financial Creditors have chosen to lodge their claims and in relation to which the IRP had constituted the CoC and also convened the 1st CoC meeting is required to be reckoned as the validly constituted CoC even as of today and not as contended by Learned Counsel for the RP and the RP / Respondent cannot constitute a CoC de novo disregarding the earlier constituted CoC.

In the circumstances, we direct the RP to convene the meeting of the CoC of the members, who constituted the CoC originally i.e., in the year 2017, soon after the order of admission was passed by this Tribunal, initiating the CIRP and place the draft of Application prepared under 12A of IBC, if any, along with Form FA or at the least Form FA as lodged with the IRP / RP, before the CoC to be called and convened, as directed above and hold a meeting of the CoC and report to this Tribunal about the decision of the Members of the CoC as constituted in the year 2017. The CoC constituted presently by the IRP / RP in derogation of the order passed by this Tribunal shall stand suspended and shall not exercise any of the powers as provided under the provisions of IBC, 2016.

Let the IRP / RP comply with the above directions within a period of ten days from today and report to this Tribunal about the outcome of the CoC meeting, as required to be called and convened. Post the matter on **03.05.2021** under the caption 'urgent listing' along with other connected Applications.

9. Aggrieved by the above order passed by this Tribunal on 22.04.2021, the Director of the Corporate Debtor whose powers stood suspended has filed an Appeal before the Chennai Bench of Hon'ble NCLAT in Company Appeal (AT)(CH)(Ins) No. 48 of 2021, which came to be dismissed vide its order dated 30.04.2021.

10. Thereafter, when the matter came up for hearing on 03.05.2021, it was submitted by the Learned Counsel for the RP that the meeting was convened on 01.05.2021 and the RP has filed the minutes of the meeting through e-filing only in the afternoon and hence the matter was adjourned to 04.05.2021.

11. On 04.05.2021, after giving a detailed hearing to the parties in relation to the issue of constitution of CoC, this Tribunal has passed the following order;

"Ld. Sr. Counsel for the Board of Directors whose powers stand suspended, Mr. P.H. Arvinth Pandian, Ld. Counsel for RP Mr. R. Subramanian and Ld. Counsel Mr. Mohan of King & Patridge for HDFC Ltd., are present through video conferencing mode.

Ld. Counsel for the RP represents that a report on 03.05.2021 as directed by this Tribunal has been filed after convening the CoC, however, certain issues are sought to be raised in relation to the Order dated 22.04.2021 passed by this Tribunal, particularly the penultimate portion of the Order, which reads as follows:

“In the circumstances, we direct the RP to convene the meeting of the CoC of the Members, who constituted the CoC originally i.e., in the year 2017, soon after the order of admission was passed by this Tribunal, initiating the CIRP and place the draft of Application prepared under 12A of IBC, if any, along with Form-‘FA’ or at the least Form-‘FA’ as lodged with the IRP/RP, before the CoC to be called and convened, as directed above and hold a meeting of the CoC and report to this Tribunal about the decision of the Members of the CoC as constituted in the year 2017. The CoC constituted presently by the IRP/RP in derogation of the order passed by this Tribunal shall stand suspended and shall not exercise any of the powers as provided under the provisions of IBC, 2016”.

In relation to the same, Ld. Counsel for the RP brings to the notice of this Tribunal specifically the report which has been filed by the Resolution Professional. After a careful perusal of the said report as filed by the Resolution Professional, it is seen that deliberately an issue is sought to be raised by the RP belatedly. Being an Officer appointed by this Tribunal, in case, if the RP had an issue in relation to the Order dated 22.04.2021, the RP should have come before this Tribunal seeking for clarification, if any required, however, he has not chosen to do so. Again, he has acted suo moto in calling for a CoC Meeting on 01.05.2021 with only one Member being a Financial Creditor of the CoC without considering the totality and ignoring the other two out of the three Members of the CoC, whose claim stood admitted prior to the Order of Hon’ble NCLAT dated 16.07.2018 even as per the admission of the RP in his report.

From the Report, it is also evident that, apart from the sole Member to whom notice has been given and who has chosen to attend, there was also another Member, who was also part of the CoC at the end of the year 2017 as follows:

SI.No	Financial Creditor	Voting Share
1	M/s. KGEYES Residency P Ltd	86.05%
2	Mr. Rohit S Bajaj	13.95%

Further, it is brought to the notice of this Tribunal by the RP that an objection has been raised by the said KGEYES Residence P Ltd., vide their letter dated 30.04.2021 that it should also form part of the CoC meeting directed to be convened presently. Since the endeavour of this Tribunal vide Order dated 22.04.2021 was to in effect prohibit the RP from convening a meeting of the CoC as suo moto constituted by him in the year 2021, this Tribunal

had mentioned the CoC as was prevalent in 2017 to consider the Section 12A Application in view of the directions given by the Hon'ble Supreme Court.

In the circumstances, we direct the RP to convene a Meeting properly by including M/s. KGEYES Residency P Ltd., and M/s.Southern Agrifurane Industries Ltd., as well as Mr. Rohit S Bajaj all as per the report of the RP as being part of the CoC prior to the passing of the Order by the Hon'ble NCLAT.

In the circumstances, we feel that an opportunity is also required to be given to M/s. KGEYES Residency P Ltd., and M/s. Southern Agrifurane Industries Ltd., to take a decision, in relation to the Application filed under Section 12A of IBC 2016 along with Form-'FA' which has been filed as an Annexure to the report of the RP. Even though on the part of the Applicant an objection is being taken to the inclusion of M/s. KGEYES Residency P Ltd., and it is stated that an Application is also pending before this Tribunal filed in the year 2017 itself, however, this Tribunal is of the view that the Applicant cannot have a locus to challenge about the constitution of the CoC as it prevailed in the year 2017 – 2018 prior to the Hon'ble NCLAT's Order.

Thus, an opportunity is given to the Resolution Professional to duly convene a meeting of the CoC having been constituted with Members, who were part of the CoC prior to the Order of Hon'ble NCLAT passed on 16.07.2016 as pointed out in the report by the RP filed on 03.05.2021 within a period of one week from today and report to this Tribunal about the outcome of the decision of the CoC within a period of one week thereafter, from the date of CoC meeting in this regard.

Post this matter on **27.05.2021**.

12. However, due to Covid-19 pandemic, the matter could not be heard on 27.05.2021 and was taken up for hearing on 02.06.2021. The RP has filed the minutes of the CoC meeting held on 25.05.2021 and a perusal of the said minutes posits the fact that CoC (as on 16.07.2018) has unanimously with 100% majority has passed a Resolution for withdrawal of the CIRP in relation to the Corporate

Debtor and the Petitioner / Operational Creditor has also tendered his Form FA dated 22.03.2021.

13. At the fag end of the argument, the Learned Counsel for the RP has submitted that the fee of the IRP has not been paid by the CoC and hence sought for a direction in relation to the same. However, it is noted that pursuant to the orders passed by this Tribunal, two CoC meetings were convened by the RP and in none of the meeting the RP has moved an agenda for fixing his fee / remuneration, however after CoC passing a Resolution for withdrawal of the Application under Section 12A of IBC, 2016 the RP seeks for fixing his fees. However, it is seen from FORM FA presented before this Tribunal that Bank Guarantee in a sum of Rs.10 lakh, has been provided towards fees and costs of the Resolution Professional by the Operational Creditor. However, an objection is taken in this regard in relation to the person who had taken the Bank Guarantee (BG) not to be the party concerned, but by a third party company. Learned Senior Counsel for the Board of Directors whose powers stand suspended gives an undertaking on behalf of them that the BG will not be returned unhonoured under any circumstances and that the amount for which BG has been given will be duly met. The same is taken on record and

in the circumstances we do not find any force in the contention of the Resolution Professional in this regard

14. Thus, taking into consideration the said submissions made by the Ld. Counsel for the Applicant/RP/Respondents as well as the averments contained in the Application and also based on the unanimous Resolution passed by the CoC on 25.05.2021 under Section 12A of IBC, 2016 for withdrawal of CIRP of the Corporate Debtor, this instant Application stands **allowed** and in the circumstances, CP/597/IB/2017 stands **withdrawn**. Consequently, the CIRP initiated against the Corporate Debtor also stands **withdrawn**. All the connected Application stands **closed**.

15. The RP is directed to hand over the management to the Board of Directors whose powers stood suspended by virtue of the initiation of the CIRP by this Tribunal while admitting the Petition in CP/597/IB/2017 vide Order dated 17.11.2017 and whose powers stand restored consequent to the withdrawal of CIRP in relation to the Corporate Debtor viz., *M/s. Aruna Hotels Limited*.

-Sd-
ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-
R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond