

NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P NO.(IB)-23(PB)/2017
CA NO.

CORAM

PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

Ms. Deepa Krishan
Hon'ble Member (T)

ATTENDANCE SHEET / SUM-ORDER SHEET OF THE HEARING BEFORE PRINCIPAL BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 31.05.2017

NAME OF THE COMPANY: Hotel Gaudavan Pvt. Ltd. (HGPL)

SECTION OF THE COMPANIES ACT: U/s 7 of Insolvency And Bankruptcy Code 2016.

<u>S.NO.</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Rashmi Gupta Practising C.S.	Non-Applicant Parties (5, 6, 7 & 8)	Rashmi Gupta
2.	ABHIRUP DASGUPTA	} ADVOCATES FINANCIAL CREDITOR	[Signature]
3.	SARGAM NARULA		
1.	Mr. K. Datta	} Resolution Professional	[Signature]
2.	Mr. Ashy Kumbal		
3.	Mr. Anurag Sirdar (R.P)		
4.	Mr. Shantanu Parashar		

ORDER

(C.A. No. 173 (PB)/2017)

This is an application filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (for brevity the 'Code') with a prayer that the jurisdiction assumed by an Arbitrator vide notice dated 25.05.2017 are wholly illegal and unlawful in the face of the order of admission dated 31st March,

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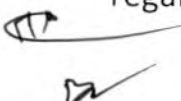
2017. Such a course would also be against the express provisions of Section 14(1) (a) of the 'Code', which reads thus:

"14(1) Subject to provisions of sub-sections (2) and (3) on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority".

A perusal of the aforesaid provision shows that on the commencement of the Insolvency, the Adjudicatory Authority is required to declare by order moratorium for prohibiting, *inter alia*, continuation of pending arbitration proceedings. On 31.02.2017, when (IB)-23(PB)/2017 was admitted, in para-15 a specific order was made granting moratorium in terms of Section 14 of the Code and we had also directed the parties to offer their co-operation to the Interim Resolution Professional. Therefore, the requirement of Section 14(1)(a) stands fulfilled and the order is binding on all stakeholders.

Moreover, there was no stand taken by the Corporate Debtor with regard to pendency of any arbitration proceedings nor any arbitrator with the



name of Mr. Pankaj Garg was ever mentioned. How somebody, who is totally stranger to the insolvency process could assume jurisdiction is a baffling proposition. It is thus declared illegal and unlawful. Further, we restrain holding of any arbitration with regard to the Respondent Company, which is already under the insolvency resolution process with Mr. Arun^{an} Sikdar has appointed as an Insolvency Resolution Professional appointed by NCLT vide order dated 31.03.2017. A copy of this order be sent to the respondent for compliance by the Applicant as well as by the Registry.

Application stands disposed of.

A copy of this order under the signature of the Bench Officer be supplied today.

(C.A. No. 87 of 2017)

On behalf of Respondent nos. 1,3 & 4, learned Counsel has stated that the amount of Rs. 30 lakhs withdrawn by them shall be deposited back in the account of the Respondent company within one week. It is further stated that an additional amount of Rs. 9.7 lakhs withdrawn shall also be deposited in the account of the Respondent company.

AA
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On behalf of Respondent nos. 5,6,7 & 8, learned Counsel has stated that the whole sum of Rs. 40 lakhs shall be deposited back in the account of the Respondent Company within one week.


In the light of the statement made by learned Counsel for Respondent nos. 1,3 & 4 as well as by learned Counsel for Respondent nos. 5,6,7 & 8, these applications have been rendered infructuous and no further orders are required. However, before parting, it is made clear to the erstwhile management, Directors and all others to strictly comply with the provisions of the Insolvency & Bankruptcy Code and avoid any adverse/penal action at the hands of the National Company Law Tribunal. We have felt the necessity to make these observations because some instructions may be required to apprise the managements of companies against which insolvency process has been initiated that once insolvency professional takes over, then their role is subordinate to the orders of the Insolvency Professional as contemplated under Sections 17 & 19 of the Insolvency & Bankruptcy Code, 2016. If we find any malice in the conduct of any person belonging to erstwhile management or any other person, we may be compelled to take extreme step of initiating prosecution/penalty and issuance of contempt proceedings as per law.

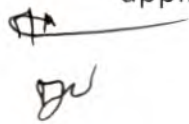
With the aforesaid observations, the Application stands disposed of.

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C.A. No. 136 (PB)/2017

Learned Counsel for the Applicant has pointed out that a sum of Rs. 3 lakhs has been withdrawn from the accounts of the Respondent Company on 03.04.2017 by one Mr. Nitesh Mishra, a Chartered Accountant, a sum of Rs. 2,50,000/- on 06.04.2017 by K.G. & Co., Supplier and a sum of Rs. 4,50,000/- by one Mr. Swadeep Singh Hora, Advocate.

Mr. Datta, learned Counsel for the Applicant has stated that the rest of the recipients, who have withdrawn the amount after 31.03.2017 as reflected  in the table under para-7 have deposited the money back in the account of the respondent company except the aforesaid entity.

Let a show-cause notice be issued to the aforesaid three entities as to why direction be not issued to pay back the withdrawal amount in the account of the respondent company. It would be advisable to deposit the amount with the account of the respondent company within next 7 days. If the advice is followed and the amount is deposited, then nothing would survive in this application. An intimation in that regard be sent to this Tribunal. If the 

amount is not deposited then all the aforesaid persons shall remain present before the Tribunal on 29th June, 2017.

List on 29th June, 2017.

Sd-

**(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT**

Sd-

**(DEEPA KRISHAN)
MEMBER(TECHNICAL)**