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NATIONAL COMPANY LAW TRIBUNAL
DIVISIONAL BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 13/06/2017 AT 02.30 PM

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL
SHRI S. VIJAYARAGHAVAN, MEMBER-TECHNICAL

APPLICATION NUMBER :
PETITION NUMBER : IND/997/ (IB)/CB/2017
NAME OF THE PETITIONER(S) : C. GANAPATHY
NAME OF THE RESPONDENT(S) : ARUNA HOTELS LIMITED
UNDER SECTION : 9 OF INSOLVENCY & BANKRUPTACY CODE 2016

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
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1) K. RAMASAMY
G.V. MOHAN KUMAR

Counsel for Applicant

G.V. Mohan Kumar

2) K. SAKTHIVEL
D. REVATHI KARTHICK

Counsel for Respondent

Revathi

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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

Arguments heard on 13.06.2017

Order passed on 13.06.2017

C.P. No.478 of 2017

Mr.D.Ramjee

Vs

M/s.Aruna Hotels Limited

With

C.P.No.479 of 2017

Mr.N.Krishnan

Vs

M/s.Aruna Hotels Limited

With

C.P.No.480 of 2017

Mr.C.Ganapathy

Vs

M/s.Aruna Hotels Limited

(Under Section 9 of the Insolvency And Bankruptcy Code 2016)

Applicant (Operational Creditor) Represented by : Counsel Mr.K.Ramasamy

Corporate Debtor represented by : Counsel Mr.K.Sathivel

CORAM :

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL) & S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

ORDER

CH MOHD SHARIEF TARIQ, MEMBER(JUDICIAL) :- (ORAL)

1. Under adjudication are three company applications numbered as C.P.478 of 2017, C.P. 479 of 2017 and C.P.480 of 2017 that have been filed under Section 9 of I&B Code, 2016, against the Corporate Debtor.

2. As the Corporate Debtor in all the three petitions is the same company i.e. M/s.Aruna Hotels Limited, we take up all the three matters to pass a common order.

However, we may take up C.P.478 of 2017 filed by Mr.D.Ramjee, Operational Creditor, wherein he claims that his arrears of salary, gratuity and leave salary is the outstanding debt and the Corporate Debtor defaulted in making payment of the same.

3. We have heard both the sides. Both of the Counsels have submitted their final arguments in detail. Counsel for Petitioner has submitted that demand was made to the tune of Rs.2,13,65,565/- towards arrears of salary, Rs.47,03,318/- towards gratuity and leave salary, totaling Rs.2,60,68,883/-, the details of which has been explained under Para 16 of the application. The Petitioner has sent a demand notice on 24.03.2017 and the same is placed on record. An affidavit of the petitioner as per section 9 (3)(b) (c) of I&B Code, 2016 is also placed on record wherein it has been deposed that the applicant has not received any amount from the date of notice till the date of filing this application and stated that the Respondent has given reply to the notice by vague and immaterial denial of the petitioner's employment. The Counsel for applicant has drawn our attention to the communication that has been made on 4th April 2014 wherein a letter has been addressed to the petitioner by Mr.N.Sivaraman, Chairman and Managing Director of the Company acknowledging the obligation to pay the entire arrears of salary as agreed by the Company as per their earlier letters and orders issued on different dates ending with the letter 31.03.2014 as shown in the statement attached. It has been promised to settle the amount within a period of three months from this date along with 19% interest for delaying the payment. The schedule reflects the details of the balance due as given in a tabular form by the Chairman and Managing Director.

4. The Counsel for Respondent has filed the counter in the matter and denied the liabilities. The Petitioner has also filed some new documents that includes Form 20-B

which stood filed with the ROC. The contents of the attachment placed at page 29 at Sl.No.6 shows that Mr.D.Ramjee (Petitioner) have been appointed on 10.01.1985. The document is a list pertaining to the names of Directors/Secretaries of Aruna Hotels Limited. The Petitioner claims that he has been employed as Junior Assistant, then he rose to the level of Company Secretary. The details annexed to the letter dated 04.04.2014 also reflect the date of joining of the Petitioner in the Company on 11.05.1964 and date of leaving as 13.05.2013. There is also a resolution that came to be passed by the Board of Directors of Aruna Hotels Ltd. in its Board Meeting held on 14.05.2013 at the registered office of the Company wherein it has been resolved that the request of Mr.D.Ramjee (Applicant) to retire from the service of the Company has been accepted. It has also been resolved that the Board of Directors of the Company appreciated the long and dedicated services rendered by Mr.D.Ramjee during his long association with the Company for 49 years and particularly as Company Secretary for nearly 28 years.

5. The documents produced by the applicant have only been rebutted by Corporate Debtor by way of reply filed wherein the claim of the Operational Creditor is denied in total. The Counsel for the Respondent has also raised legal issues, one relating to the notice which is said to have not given as per Form 3, second is that the matter is barred by limitation and the third is that the matter is disputed. We have seen the statutory notice given and can conclude that the notice contains all the legal requirements.

6. Since the liability of clearing arrears of salary has been acknowledged by the Managing Director vide his letter dated 04.04.2014. Therefore, the limitation, if any, at all commences from the date of acknowledgment and the petition has been filed on

03.04.2017 which is well within the period of limitation. Counsel for Respondent has submitted three rulings one that have been handed down by their Lordship of the High court of Madras, decided on 8.11.2014 wherein it has clearly been stated that for any kind of wages, the limitation period is 3 years, as per Article 7 of the Limitation Act, 1963 and in his case, the petition is filed within the period of limitation. The counsel for Respondent has also submitted a judgment which has been handed down by the Principal Bench, NCLT, New Delhi, wherein the scope of the term 'dispute' has been explained. However, in the reply which has been given by the Corporate Debtor to the statutory notice given by the applicant there does not appear any dispute being raised except simple denial of the liability as claimed by the Petitioner. Counsel for respondent submitted that if any acknowledgement is made by the Corporate debtor, that is required to be done within the period of limitation as per Section 18 of the Limitation Act, 1963.

7. Since all the formalities have been complied with by the applicant as per the I&B Code, 2016 We admit the application and order the commencement of the corporate insolvency resolution process which ordinarily shall get completed within 180 days, reckoning from the day this order is passed. We appoint Mr.P.Srinivasam, as interim insolvency professional who has been proposed by the operational creditor. It is stated here that no disciplinary proceeding is pending against the proposed Interim Insolvency Professional and his name is reflected on the website of the Insolvency and Bankruptcy Board of India. He is directed to take charge of the corporate debtor immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Code within **three days** from the date the copy of this order is received, and call for

submissions of claim under section 15 of I&B Code, 2016 in the manner as prescribed. We declare the moratorium which shall have effect from the date of this order till the completion of corporate insolvency resolution process, for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit 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;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (d) The recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate debtor.

8. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

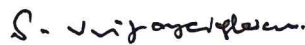
9. The Interim Insolvency Professional shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor company, its promoters or any person associated with the management of the Corporate Debtor are expected to extend all assistance and cooperation to the Interim Insolvency Professional as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

10. The Registry is directed to inform the Insolvency Resolution Professional to take charge of the entity and make compliance with this order as per the provisions of I&B Code, 2016.

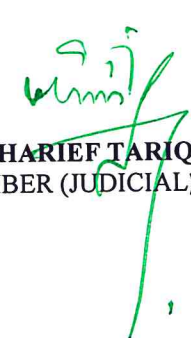
11. In relation to C.P.479 of 2017 filed by Mr.N.Krishnan and C.P.480 of 2017 filed by Mr.C.Ganapathy, the operational creditors concerned are directed to approach the Interim Insolvency Professional appointed in C.P.478 of 2017 to make their claims and the Insolvency Professional shall deal with the same in accordance with law.

12. Accordingly, all the three Company petitions are disposed of. The Registry is directed to issue copy of this order to the operational creditors and corporate debtor.

Pronounced in the open court.



(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)


(CH. MOHD. SHARIEF TARIQ)
(MEMBER (JUDICIAL))