

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

CP/597/(IB)/CB/2017

Under Section 9 of the Insolvency and Bankruptcy Code 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Mr. N.Subramanian (Petitioner/Operational Creditor)
Vs

M/s. Aruna Hotels Limited (Respondent/Corporate Debtor)

Order delivered on 17th November, 2017

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

*For Operational Creditor (s): Mr. S. Prakash for
M/s. T. S. Vijaya Raghavan Counsel*

*For Corporate Debtor(s) : Ms. D. Revathi Karthick and
Mr. Sai Vihari, Counsel*

ORDER

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

1. Under adjudication is CP/597/(IB)/CB/2017 that has been filed by Mr. N.Subramanian an Ex-employee of the Corporate Debtor viz M/s. Aruna Hotels Limited. 

2. The brief facts stated by the Petitioner are that he has claimed an arrears of salary dues since the year 1999 for rendering services to the Corporate Debtor for about 37 years as stated in the letter dated 31.03.2014, placed at page 97 of the typed set filed with the Petition. It has been stated that whenever the Petitioner/Operational Creditor demanded arrears of salary and wanted to be relieved, the Managing Director persuaded him to continue and assured that all his arrears of salary would be settled and for the reasons that the Petitioner remained associated with the Company for a very long time, the same was accommodated by the Petitioner and he continued to work on a reduced consolidated salary of Rs.25,000/-. The Petitioner has placed on file a letter dated 30.09.2006 that assured the Petitioner to clear his dues. The letter dated 30.09.2006 reflects that the Petitioner/Operational Creditor was entitled to the arrear of the salary as per the order dated 01.02.1998 fixed on 01.01.2000 as follows:-

Basic Salary : 18,000/-



HRA	: 9,000/-
Special Allowance	: 9,000/-
Reimbursements	: <u>5,000/-</u>
Total	: <u>41,000/-</u>
PF Contribution : As per Rules.	
LTA	: 3 months' salary for every 3years

It was also mentioned in the letter that he will be eligible for an increase of 10% every year on the total salary, reckoned from 01.01.2001. The letter under reference was issued by the then Managing Director of the Respondent/Corporate Debtor.

3. When the Petitioner has submitted his resignation on 22.01.2013 his consolidated salary was increased to Rs.35,000/- with effect from 01.02.2013, as an incentive for withdrawing his resignation. However, his resignation was accepted and he was relieved from the services on 30.06.2013. The copy of the resignation letter of the petitioner dated 22.01.2013 is placed at page 95 of the typed set filed with the Petition and the letter dated 30.06.2013 by which the resignation was accepted is placed at page 96 of the typed set filed with the Petition wherein the management of the Corporate Debtor expressed its deep appreciation of the services 

rendered by the Petitioner/Operational Creditor during his long association with the Company spanning over a period of 29 years as has been stated in the letter dated 30.06.2013 placed at page 96 of the typed set filed with the Petition. These documents have not been rebutted through any documentary evidence by the Respondent/Corporate Debtor. It is also on record that even after resignation the Petitioner/Operational Creditor was retained on a consolidated salary of Rs.35,000/- per month and it was assured that his arrears of salary would be settled over year end i.e., 31.03.2014. But, the same was not done and a letter of confirmation was issued on 31.03.2014 assuring to the Applicant/Operational Creditor that the accounts will be settled very shortly in accordance with the terms of the letter of the management dated 30.09.2006. Then, on 30.09.2014 an assurance was given that the arrear of salary will be settled in a period of one month reckoning from 30.09.2014 failing which it was promised that interest at the rate of 9% will be paid for the delayed payments. The statement of the 

arrears of salary annexed by the Respondent/Corporate Debtor with the letter dated 30.09.2014 reflects very clearly the outstanding balance of the arrears of salary as claimed by the Petitioner/Operational Creditor. The letters mentioned above are placed at pages 97 and 98 of the typed set filed with the Petition. The Petitioner/Operational Creditor has supported his claim with Director's Report attached to the Annual Report for the Financial Year 2013-2014 and 2014-2015. The Report is filed with the Written Arguments and marked as Annexure -1

4. The Petitioner/Operational Creditor has given Section 8 notice on 29.06.2017. The copy of which is placed at page 15 of the typed set filed with the Petition, claiming arrears of salary of Rs.1,87,75,631/- as outstanding debt against the Respondent/Corporate Debtor. The reply to the said notice was given on 05.07.2017 by the Respondent/Corporate Debtor stating therein that all his salary has been paid, however, it was admitted that gratuity amounting to 

Rs.5,85,577/- is pending as approved on 06.02.2013. The reply of the notice is placed at page 22 of the typed set filed with the petition.

5. The Respondent/Corporate Debtor have filed the counter affidavit stating therein that the due diligence report does not reflect the liability of the arrears of salary of the Petitioner/Operational Creditor. It has been stated that the employee's dues has been settled and nothing is due. But, interestingly it has been claimed in the reply that the claim of the Petitioner/Operational Creditor is barred by limitation. The defence taken by the Respondent/Corporate Debtor is highly contradictory, if the dues of the employee have been settled, and there is nothing outstanding, then, the argument that the claim is barred by limitation does not carry any weight. The other defence that has been taken by the Respondent/Corporate Debtor is that it has paid Rs.2,10,000/- on 31.07.2015 as arrear of salary. In support of the same, they placed on record 'payment voucher' filed with the Written Arguments which goes

to show that the entry '*pay to*' is filled with name "*N.Subramanian*"; entry '*Rupees*' is filled with words "*Two Lakh and Ten Thousands only*" and entry '*Rs.*' is filled with amount, "*2,10,000/-*". These are being written in one hand writing. However, entry '*debt*' is filled with the words "*salary arrears*" and entry '*(particulars)*' is filled with the words "*full & final settlement of salary as on date*" which are in different hand writing. The 'payment voucher' *per se* reflects that a fraud is being played on the Petitioner/Operational Creditor, which can easily be identified with the naked eyes. Therefore, the entries relating to the "*salary arrears*" and "*full & final settlement of salary as on date*" seem to have been entered with *mala fide* intention to show that the amount paid is full and final settlement of the arrears of salary, which in no circumstances could be relied upon.

6. Therefore, the evidence i.e. "payment voucher" relied upon by the Respondent/Corporate Debtor, as proof of payment of the arrears of salary stands

rejected. Moreover, the Applicant/Operational Creditor explained that the voucher for Rs.2,10,000/- shown by the Respondent/Corporate Debtor is arrears of six months' payment @ Rs.35,000/- p.m., which was not paid on due dates, but then paid at one go.

7. It will not be out of context to mention that the 'Demand Notice' has been issued by the Petitioner/Operational Creditor on 29.06.2017 as has been mentioned hereinabove and the Respondent/Corporate Debtor has approached the City Civil Court at Chennai on 06.07.2017 and filed the OS.No.36/33/2017 against one M.Sivaram, and N.Subramanian (Operational Creditor), wherein the prayers has been made to declare the notice/letters dated 30.09.2006, 22.01.2013, 30.06.2013, 31.03.2014 and 30.09.2014 issued by the Respondent/Corporate Debtor itself as null and void, and not binding on the same and for grant of permanent injunction restraining the Petitioner/Operational Creditor from relying on or claiming against the Respondent/Corporate Debtor on

the basis of the said letters. Under para 6 of the 'Plaint' it is clearly mentioned that the Petitioner/Operational Creditor has issued a notice claiming arrears of Rs.1,87,75,631/- as arrears of Salary, claiming himself entitled for an enhancement of salary, shows that Section 8 notice dated 29.06.2017 was received by the Respondent/Corporate Debtor, and within one week i.e. 06.07.2017 OS. No. 3633/2017 has been filed.

8. Thus Civil Suit OS.No.3633/2017 has been filed by the Corporate Debtor in order to camouflage/circumvent the initiation of the Corporate Insolvency Resolution Process by the Petitioner/Operational Creditor against the Respondent/Corporate Debtor, which cannot be termed as dispute relating to the outstanding debt because the filing of the Civil Suit by the Corporate Debtor appears to be malafide, fraudulent and mischievous. 

9. The copy of the Complaint dated 06.07.2017 is placed at pages 57 to 65 of the typed set filed with the counter. The last letter dated 30.09.2014 placed at page 98 of the typed set filed with the petition is evidencing the acknowledgment of the entire arrears of salary as claimed by the Petitioner/Operational Creditor, wherein an assurance was also given that if there is a delay in payment, the Respondent/Corporate Debtor will pay interest at the rate of 9% p.a.

10. Therefore, the claim is not time barred under the law of limitation, because the letters which have been given by the Corporate Debtor to the Petitioner/Operational Creditor confirm/acknowledge the arrears of salary due.

11. We have heard the counsels for the parties, peruse the records placed on the file. In totality of the facts and circumstances, we are constrained to conclude that the Corporate Debtor defaulted in 

making payment of the arrears of the salary to the Petitioner/Operational Creditor. The Operational Creditor has complied with requirements under Sections 8, 9 (3) (b) (c) of I&B Code, 2016 and has made out a case for admission of the Application under Section 9 of the Insolvency and Bankruptcy Code, 2016.

12. Therefore, we admit the application and we 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.

13. We appoint Mr. Venkataramanarao Nagarajan, as IRP, who has been proposed by the Operational Creditor. There is no disciplinary proceedings pending against the IRP as evidenced from Form-2 and his name is reflected in IBBI website. The IRP is directed to take charge of the Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the

I&B Code, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed.

14. 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 lessor where such property is occupied by or in the possession of the corporate debtor.

15. 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.

16. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor is expected to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the Application is disposed of.

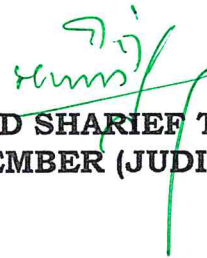
17. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

18. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

The address details of the IRP are as follows: -

Mr. Venkataramanarao Nagarajan,
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S.VIJAYARAGHAVAN
MEMBER (TECHNICAL)
PAM


CH. MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)