



ARUNA HOTELS LIMITED

CIN: L15421TN1960PLC004255

July 27, 2021

To,
The Manager,
BSE Limited
Listing Compliance Department
Floor No.25, P.J. Towers,
Dalal Street,
Mumbai - 400 001

Scrip Code: 500016

Dear Sir,

Subject: CIRP under IBC 2016 of M/s. ARUNA HOTELS LIMITED
CIN: L15421TN1960PLC004255 (BSE Scrip Code: 500016/INE957C01019) – reg.

Ref: your email dated July 26, 2021

Referring to the captioned subject, we would like to reply to your good selves that with respect to email received from the Insolvency Resolution Professional (IRP) which was addressed to your good selves, the IRPs' Advocate, Mr. Subramanian, has mentioned the case yesterday before National Company Law Tribunal (NCLT) to list the matter as urgent seeking permission to hand over the possession.

The court has instructed the counsel to file the matter in a proper manner before the Registry.

We have received the copy of the order of the Hon'ble Supreme Court dated 23.07.2021, and we are taking effective steps to Vacate Stay in the same. Please note that the application filed for Vacating Stay and it is numbered as IA No. 87550/2021.

Further developments in this regard shall be intimated to you promptly. We are enclosing the copy of Application prayed for vacating the Stay order.

Thanking you,

Yours Faithfully,
for **ARUNA HOTELS LIMITED**


K LAKSHMI



COMPANY SECRETARY & COMPLIANCE OFFICER

Encl: a/a

Appeal (AT) (CH) (ins) No. 48 of 2021 passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi

9. **Annexure A-8**
True copy of the order dated 04.06.2021 passed by NCLT, Division Bench, Chennai in IA 361/2021 in CP 597/IB/2017 52 - 62
10. **Annexure A-9**
True copy of the order dated 06.07.2021 passed by NCLT, Chennai in IA/540/CHE/2021 in CP/597/IB/2017 63 - 70
11. **Annexure A-10**
True copy of the order dated 23.07.2021 in C.A.No.2901 /2021 passed by this Hon'ble Court 71 - 72
12. **Annexure A-11**
True copy of the letter dated 23.07.2021 written by IRP-Respondent No.2 73 - 76
13. **Annexure A-12**
True copy of the urgent Application dated 24.07.2021 in IA/915/IB of 2020 in CP/511/IB/2017 filed before the Hon'ble NCLT, Chennai 77 - 83
14. Proof of service 84

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

I.A. NO. OF 2021

IN

CIVIL APPEAL 2901/2021

IN THE MATTER OF:

D Ramjee

...Appellant

VERSUS

KN Rajakumar&Ors.

... Respondents

**APPLICATION VACATING STAY GRANTED VIDE THE INTERIM
ORDER DATED 23.07.2021**

TO,

THE HON'BLE CHIEF JUSTICE OF THE HON'BLE SUPREME
COURT OF INDIA AND HON'BLE COMPANION JUDGES

THE HUMBLE APPLICATION OF THE RESPONDENT NO. 1 /
APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

The Respondent No. 1 humbly begs to submit as under:

1. This Hon'ble Court on 23.07.2021 ("**Interim Order**") passed an order granting stay on the impugned order dated 30.04.2021 in Company Appeal (AT)(CH)(Ins) No. 48/2021 passed by the Hon'ble National Company Law Appellate Tribunal, Chennai ("**Impugned Order**") and stay of further proceedings taken out in pursuance of the Impugned Order.
2. The Applicant has filed the present Application for vacating stay as:
 - i. The new management of Corporate Debtor has successfully revived the business by settling claims of members of the committee of creditors as per its books of accounts.
 - ii. The Appellant herein had applied to section 9 of the IB Code, 2016 against the Corporate Debtor. The Hon'ble NCLAT dismissed this

Application in Company Appeal (AT) 87 of 2017 vide order dated 02.08.2017.

A true copy of the order dated 02.08.2017 passed by the Hon'ble NCLAT in Company Appeal (AT) 87 of 2017 is annexed as **Annexure A-1. (Pages 13 to 25)**

- iii. According to the undertaking given vide paragraph 17 of the aforesaid order, payment of Rs. 18,50,000.00 was paid to the Appellant. Copy of the letter dated 22.08.2017 along with copy of Demand drafts issued by M/s. Aruna Hotels Limited is herewith **Annexure A-2 (pg 26 to 28)**
- iv. The Appellant issued an untenable reply. Copy of the Letter dated 01.09.2017 is herewith produced as **Annexure A-3 (pg 29 to 30)**
- v. The Managing Director of Aruna Hotels, issued an appropriate reply. Copy of letter dated 12.09.2017 is herewith produced as **Annexure A-4. (Pg 31 to 32)**
- vi. The Appellant has no *locus standi*
 - a. *Vide* order dated 03.03.2021, this Hon'ble Court rejected the Application filed by the Appellant for permission to file Civil Appeal.
 - b. *Vide* order dated 06.07.2021, the Hon'ble NCLT dismissed the Application preferred by the Appellant challenging the withdrawal of CIRP under section 12A of the IB Code, 2016.
- vii. Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor has been withdrawn
- viii. The adverse impact of the Interim Order

4. The Applicant seeks leave of this Hon'ble Court to state relevant and material facts leading to the present Application:

02.08.2017	The Appellant herein had applied to section 9 of the IB Code, 2016 against the Corporate Debtor. The Hon'ble NCLAT dismissed this Application in Company Appeal (AT) 87 of 2017 vide order dated 02.08.2017. Note: He does not challenge this order.
22.08.2017	Pursuant to the undertaking given at Paragraph 17, M/s. Aruna Hotel made payment of Rs. 18,50,000 (Rupees Eighteen Lakhs Fifty Thousand Only).
17.11.2017	The Adjudicating Authority (NCLT, Chennai) vide its order dated 17.11.2017, admitted a petition under Section 9 of the IB Code.
16.07.2018	The Appellant Authority (NCLAT) vide judgement dated 16.07.2018 allowed the Appeal filed by M/s Subasri Reality Private Limited.
14.08.2018	Respondent No. 3 filed an appeal before this Hon'ble Court vide C.A No. 187 of 2019.
15.09.2018	The Appellant challenged the judgment and order dated 16.07.2018 vide Dairy No. 34836 of 2018.
03.03.2021	This Hon'ble Court allowed the Civil Appeal No. 187 of 2019 filed by one N Subramanian (Respondent No. 3). At the same time, dismissed this Petitioner's Appeal filed vide D. No. 34836/2018. A true copy of the Judgment and order dated 03.03.2021 passed by this Hon'ble Court in CA 187/2019 is annexed as Annexure A-5.(Pages 33 to 40)

19.03.2021	This Hon'ble Court gave liberty to the former Directors of the Corporate Debtor for withdrawal of CIRP by approaching the CoC under Section 12A of IBC. Copy of the order dated 19.03.2021 in M. A. No. 480 of 2021 in C.A. No. 187 of 2019 passed by this Hon'ble Court is herewith produced as <u>Annexure A-6 (Pg 41 to 42)</u>
22.04.2021	The Hon'ble NCLT directed the RP to convene meeting of the meeting of CoC of the members who constituted the CoC originally i.e., in the year 2017.
30.04.2021	The Hon'ble NCLAT dismissed the Appeal, upholding the order dated 22.04.2021 passed by the Hon'ble NCLT. (impugned order). Copy of the order dated 30.4.2021 in Company Appeal (AT) (CH) (ins) No. 48 of 2021 passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi is herewith produced as <u>Annexure A-7 (pg 43 to 51)</u>
25.05.2021	CoC unanimously resolved to withdraw CIRP initiated against the Corporate Debtors.
04.06.2021	The Hon'ble NCLT allowed withdrawal of CIRP against the Corporate Debtor and directed the Resolution Professional to hand over management of the Corporate Debtor to the Board of Director. The aforesaid order stands implemented. True copy of the order dated 04.06.2021 passed by NCLT, Division Bench, Chennai in IA 361/2021 in CP 597/IB/2017 is annexed as <u>Annexure A-8. (Pages 52 to 62)</u>
06.07.2021	The Hon'ble NCLT dismissed the Application filed by Appellant as infructuous. The Hon'ble NCLT noted that by virtue of the order allowing withdrawal of CIRP against the

	<p>Corporate Debtor, the RP and CoC in relation to the Corporate Debtor has become <i>functus officio</i>.</p> <p>True copy of the order dated 06.07.2021 passed by NCLT, Chennai in IA/540/CHE/2021 in CP/597/IB/2017 is annexed as Annexure A-9. (Pages 63 to 70)</p>
23.07.2021	<p>This Hon'ble Court passed an interim order granting stay on the impugned order dated 30.04.2021 in Company Appeal (AT)(CH)(Ins) No. 48/2021 passed by the Hon'ble National Company Law Appellate Tribunal, Chennai and stay of further proceedings taken out in pursuance of the Impugned Order.</p> <p>True copy of the order dated 23.07.2021 in C.A.No.2901/2021 passed by this Hon'ble Court is annexed as Annexure A-10.(Pages 71 to 72)</p>
24.07.2021	Hence, the present Application.

THE NEW MANAGEMENT OF THE CORPORATE DEBTOR HAS SUCCESSFULLY REVIVED THE BUSINESS

1. The present issue being faced by the Corporate Debtor is the legacy of the old management. Post-February 2015, new management (M/s. Gay Travels Pvt. Ltd, M/s. Sovereign Media Marketing Pvt. Ltd and M/s. Rani Printers Pvt. Ltd.) revived the business and turned it into a solvent entity. CIRP was initiated against the Corporate Debtor on an application filed by Respondent No. 3 – N. Subramanian for arrears of salary dues. The Appellant is also an ex-employee of the Corporate Debtor who was relieved on 31.05.2013 i.e., much before the new management took charge of the Corporate Debtor.

2. The new management has successfully revived the corporate debt business by making huge investments into the business, renovating the premises, letting out property, etc. In other words, the Corporate Debtor is a going concern. In this regard, the Applicant seeks leave of this Hon'ble Court to place on record the following facts:

i. The new management has infused a substantial amount of money into relieving the Corporate Debtor from its financial difficulties:

a. Total investment - Till December, 2020, the new management has invested a sum of Rs. 67,66,61,650 (Rupees Sixty-Seven Crores Sixty Six Lakhs Sixty One Thousand Six Fifty Only)

b. Hotel renovation - The new management has spent an amount of Rs. 31,89,34,519/- (Rupees Thirty One Crores Eighty Nine Lakhs Thirty Four Thousand Five Hundred and Nineteen Only) on renovation of the hotel premises which it runs

c. Borrowing - The new management has borrowed Rs. 41,40,00,000/- from banks for the working capital requirements of the Corporate Debtor and they have been servicing the loan facilities without any irregularities.

ii. The Corporate Debtor under its new management has disbursed a sum of Rs. 46,31,16,650/-, from 2014-15 till 2017-18, towards repaying its creditors and bank loans after proper verification of their particulars in the following manner:

Year	Payments made to the Creditors of the Corporate
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	Debtor
2014-15	Rs.12,14,48,294
2015-16	Rs.19,13,91,112
2016-17	Rs.10,91,02,629
2017-18	Rs.4,11,74,615
TOTAL Rs.46,31,16,650	

On 30.10.2020, the new management of the Corporate Debtor executed a lease deed in favour of M/s Culinary Ocean Hospitality LLP ("**Culinary**") to give on lease the property of the Corporate Debtor being Aruna Hotel Building, Ground Floor at Door No. 145, Sterling Road, Nungambakkam, Chennai for the use of the business staff of Hard Rock Cafe for 15 years for a monthly rent of Rs. 50,000/- (Rupees Fifty Thousand Only) shall be enhanced by 15% every three years. An amount of Rs. 3,00,000/- (Rupees Three Lakhs Only) was deposited with the Corporate Debtor as security. Monthly rent invoices in this regard has been raised from February 2021.

- iii. The Corporate Debtor and Culinary further entered into a license agreement on 30.10.2020 to run Hard Rock Cafe in a portion of the hotel property of the Corporate Debtor for a term of fifteen years with a monthly license fee of Rs. 5,14,000/- (Rupees Five Lakhs Fourteen Thousand Only) and annual conducting fees of Rs. 12,00,000/- (Rupees Twelve Lakhs Only). An amount of Rs. 30,84,000/- was deposited as with the Corporate Debtor as security. License fee invoices in this regard has been raised from February 2021.

- iv. The renovation work at the hotel is complete, and final completion works of the multi-level car parking and electrical transformer are underway.
- v. As things stand now, the hotel's renovation is nearing completion, and all major works are completed. The hotel is scheduled to open in November 2021. The opening date had to be pushed back due to lockdown. Once the hotel is launched, it would generate much-needed employment and revive the economy. When the hotel reopens for business, it would have 82 rooms and four restaurants, generating direct employment of 150 and indirect employment of 100.

THE APPELLANT HAS NO *LOCUS STANDI*

3. The Appellant has no *locus standi* to file the present Appeal as he is not a party in these proceedings. On 03.03.2019, this Hon'ble Court rejected the Application filed by the Appellant for permission to file Civil Appeal. It is relevant to note that the Appellant filed the Civil Appeal against an order rejecting initiation of CIRP against the Corporate Debtor on an application filed by Respondent No. 3.
4. The Hon'ble NCLT on 06.07.2021 dismissed the Application filed by Appellant as infructuous. The Hon'ble NCLT noted that by virtue of the order allowing withdrawal of CIRP against the Corporate Debtor, the RP and CoC in relation to the Corporate Debtor has become *functus officio*.

CIRP AGAINST THE CORPORATE DEBTOR HAS BEEN WITHDRAWN

5. *Vide* the Impugned Order, the Hon'ble NCLAT directed RP to convene meeting of the members who constituted the CoC originally i.e., in the year 2017 when the CIRP was commenced against the Corporate Debtor - Aruna Hotels Ltd. The proceedings borne out in pursuance of the Impugned Order are as follows:
- i. *Vide* resolution dated 25.05.2021, CoC unanimously resolved to withdraw CIRP initiated against the Corporate Debtors.
 - ii. Pursuant to this, the Hon'ble NCLT on 04.06.2021 allowed withdrawal of CIRP against the Corporate Debtor and directed the Resolution Professional to hand over management of the Corporate Debtor to the Board of Director. The aforesaid order stands implemented.

ADVERSE IMPACT OF THE INTERIM ORDER

6. The Corporate Debtor has proposed a rights issue of Rs. 24,90,00,000/- (Rupees Twenty Four Crores Ninety Lakhs Only) to its shareholders at an issue price of Rs. 10/-. The objective of the proposed fund raising by way of the right issue is to infuse more equity, to enhance the net worth of the Corporate Debtor without any change in control. The rights issue also provides an opportunity to the shareholders to participate up to their entitlements and apply for additional shares. This would also help the Corporate Debtor improve its debt-equity ratio and avail better credit facilities in the future.
7. The rights issue is scheduled to commence on 03.08.2021 and end on 17.08.2021. The listing of rights issue shares is expected to be completed on or before 01.09.2021. If the Interim Order is implemented, the hotel's

scheduled rights issue and opening will have to be cancelled, which will cause irreparable loss to the Corporate Debtor.

8. As a result of the Interim Order dated 23.07.2021, the RP is seeking to take control of the management of the Corporate Debtor from its promoters. On 24.07.2021 the RP filed an application before the Hon'ble NCLT for urgent hearing. True copy of the letter dated 23.07.2021 written by IRP-Respondent No.2 is annexed as **Annexure A-11(Pages 73 to 76)**. True copy of the urgent Application dated 24.07.2021 in IA/915/IB of 2020 in CP/511/IB/2017 filed before the Hon'ble NCLT, Chennai is annexed as **Annexure A-12(Pages 77 to 83)**.

9. The actions of the RP and the continuation of CIRP will be a long-drawn affair, causing grave prejudice to the Corporate Debtor and the purchasing entities who have revived and made the Corporate Debtor solvent after 2015 with great difficulty.

10.The Appellant has not sought any relief for stay on the operation of the order dated 04.06.2021 allowing withdrawal of CIRP against the Corporate Debtor.

11.The Applicant/Respondent No. 1 has a good case on merits and therefore balance on convenience lies in their favor and irreparable harm would be caused to the Applicant if the present Application is not allowed.

12.It is submitted that it would be, therefore, just, proper and in the interest of justice, that the present Application is allowed in favour of the Applicant.

11

PRAYER

It is thus most respectfully prayed that this Hon'ble Court may be pleased to:

- i. Vacate Interim Order dated 23.07.2021 in Civil Appeal No. 2901 of 2021 passed by this Hon'ble Court
- ii. Pass any other judgment or order as this Hon'ble Court may deem fit in the facts and circumstances of this case.

AND FOR WHICH ACT OF KINDNESS THIS HUMBLE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY



BALAJI SRINIVASAN

ADVOCATE FOR RESPONDENT NO. 1/APPLICANT

PLACE: NEW DELHI

FILED ON: 26.07.2021

IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2901 OF 2021

IN THE MATTER OF:

D RAMJEE

...PETITIONER

VERSUS

KN RAJAKUMAR & ORS.

....RESPONDENTS

AFFIDAVIT

I, KN Rajakumar, S/o Mr. Kumara Velayutha Nadar aged: 59 years having office at No.86, Periyar EVR High Road, Chennai - 600007, do hereby solemnly affirm and state on oath as follows:

1. I am the authorized representative of the Applicant in the above application and as such I am fully conversant with the facts and circumstances of this case and hence competent to swear this affidavit.
2. I have gone through the contents of the accompanying application and the same are true and correct to the best of my knowledge and no part of it is false and nothing material has been concealed there from. The contents of the application have been explained to me, which I fully understood.
3. The annexures, if any, are the true copies of the respective originals and are essential parts of record.
4. That the facts stated above affidavit are true and correct and no material has been concealed there from.

Verified at Chennai, on this the 24th day of July 2021

DEPONENT

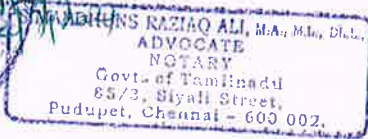
Verification

I deponent above named state that this is my name and signature, and what is stated in paragraphs 1 to 4 are true and correct as of my knowledge and belief. No material facts have been concealed.

Place: Chennai

Date: 24.07.2021

DEPONENT



NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 59 of 2017

IN THE MATTER OF :

M/s. Aruna Hotels Limited ... Appellant

Versus

Mr. N. Krishnan ... Respondent

WITH

Company Appeal (AT) (Insolvency) No. 87 of 2017

IN THE MATTER OF:

M/s. Aruna Hotels Limited ... Appellant

Versus

Mr. D. Ramjee ... Respondent

AND

Company Appeal (AT) (Insolvency) No. 88 of 2017

IN THE MATTER OF:

M/s. Aruna Hotels Limited ... Appellant

Versus

Mr. C. Ganapathy ... Respondent

Present: For Appellants: - Shri Mohan Parasaran and Shri Gopal Jain, Senior Advocates with Shri Vishal Gehrana, Shri Nakul Gandhi, Shri Kriti Awasthi and Shri Arvind Chari, Advocates

For Respondents : Shri Ritin Rai with Shri S. Santanam Swaminadhan and Shri Aabhas Kshetrapal, Advocate

ORDER

02.08.2017 In these three appeals, as common questions of law involved, they are heard together and are being disposed of by this common judgement.

2. The respondents, Mr. N. Krishnan (in Company Appeal (AT) (Insolvency) No. 59 of 2017), Mr. D. Ramjee (in Company Appeal (AT) (Insolvency) No. 87 of 2017) and Mr. C. Ganapathy (in Company Appeal (AT) (Insolvency) No. 88 of 2017) are ex-employees of appellant-M/s. Aruna Hotels Limited, preferred their respective applications under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of Corporate Insolvency Resolution Process against the appellant/'Corporate Debtor'-M/s. Aruna Hotels Ltd. They alleged that the arrears of salaries due to them have not been paid and thereby, there is a default of debt.

3. Learned Adjudicating Authority (National Company Law Tribunal) Division Bench, Chennai (hereinafter referred to as 'Adjudicating Authority') noticed that one of the respondent employee, Mr. D. Ramjee, claimed amount to the tune of Rs.2,13,65,565/- towards arrears of salary, and Rs. 47,03,318/- towards gratuity and leave salary, totalling Rs. 2,60,68,883/- and a demand notice was sent by the said employee on 24th March, 2017. An affidavit sworn by

Mr.D. Ramjee under Section 9 (3)(b)(c) of the I&B Code has been placed on record and thereby admitted the application.

4. In view of the fact that one of the application has been admitted, in relation to the other two applications, preferred by Mr. N. Kirshnan and Mr. C. Ganapathy, both the 'Operational Creditors', Learned Adjudicating Authority directed them to approach Interim Insolvency Professional appointed pursuant to the first case of Mr. D. Ramjee to make their claim and the Insolvency Professional has been asked to deal with the same in accordance with law by common order dated 13th June, 2017. The aforesaid common order has been passed in C.P. No. 478 of 2017 with C.P. No. 479 of 2017 and C.P. No. 480 of 2017.

5. On 7th July, 2017, when the matter was taken up, learned senior counsel for the appellant submitted that all the respective respondents/ex-employees/'Operational Creditors' served advocate notice on the appellant purported to have been issued under Section 8 of the I&B Code. It was further submitted that no notice under Section 8 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as 'Adjudicating Authority Rules') and Form-3/Form-4 thereof were served on the appellant. The appellant also raised other questions to suggest that the applications preferred by all the three respondents/'Operational Creditors' under Section 9 of the I&B Code were not complete and were fit to be rejected.

6. In view of such submission notices were issued on respondents. They have appeared. We have heard learned counsel for the parties.

7. From the record we find that an advocate notice dated 27th February, 2017 was given by one Shri G.V. Mohan Kumar, Advocate, on behalf of respondent-Mr. N. Krishnan, aged about 66 years. He retired on 30th September, 2011, i.e. about six years back.

8. In the case of Mr. D. Ramjee, similar notice was issued by Mr. G.V. Mohan Kumar, Advocate on 27th February, 2017 on behalf of Mr. D. Ramjee aged about 70 years who was relieved on 31st May, 2013 i.e. about four years back. Another similar notice dated 27th February, 2017 was issued by the same lawyer, on behalf of Mr. C. Ganapathy, aged 70 years who was also relieved on 31st May, 2011 i.e. about six years back. Thus, we find that there is delay in preferring all the applications, without going into the question of limitation or the other questions, as raised by learned senior counsel for the appellant, taking into consideration the fact that the respondents are ex-employees of the appellant, we requested the learned senior counsel for the appellant to find out whether the appellant intends to pay the arrears, if any, due to one or other employee.

Today, it is informed that though the claims of the respondents are barred by limitation, the appellant may agree to pay arrears of

three years' salary, if due to one or other respondent and post-retirement benefit, if due.

9. Learned counsel for the respondents submits that the respondents do not agree with the proposal as given on behalf of the appellant and, therefore, we heard the appeals on merit.

10. Admittedly, no demand notice under Section 8 was given by any of the individual respondent-'Operational Creditor', either in Form-3 or Form-4 of the Adjudicating Authority Rules. All the notices, which are same and similar and all dated 27th February, 2017, were issued by the same advocate, on behalf each of the respondents. Only the amount of default shown therein are varying. Learned counsel for the respondents accepts that apart from advocate notice, no separate notice under Section 8 were individually given by any of the respondents.

11. Similar issue fell for consideration before this Appellate Tribunal, in the case of "Macquarie Bank Limited Vs. Uttam Galva Metallics Limited - (Company Appeal (AT) (Insol.) No. 96 of 2017." In the said case, this Appellate Tribunal, having noticed that the notices under Section 8 of the I&B Code were issued by advocate/lawyer, by judgement & order dated 17th July, 2017 observed and held as follows:

"13. From the plain reading of sub-section (1) of Section 8 it is clear that on occurrence of default, the

'Operational Creditor' is required to deliver a demand notice of unpaid operational debt, copy of invoice, demanding payment of amount involved in the default to the 'Corporate Debtor' **"in such form and manner as prescribed."**

14. Sub-Rule (1) of Rule-5 of the Adjudicating Authority Rules mandates the 'Operational Creditor' to deliver the 'Corporate Debtor' the demand notice in Form-3 or invoice attached with the notice in Form-4 as quoted below:-

"5. Demand notice by operational creditor. -

(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely. -

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4

(2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,

(a) at the registered office by hand, registered post or speed post with acknowledgement due; or

(b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor

(3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any."

15. Clause (a) & (b) of sub-Rule (1) of Rule-5 of the Adjudicating Authority Rules mandates the 'Operational Creditor' to deliver the 'Corporate Debtor' either the demand notice in Form - 3 or a copy of an invoice attached with a notice in Form - 4. If the Rule 5 is read with the demand notice Form - 3 or invoice in Form - 4, it is clear that who are persons authorized to give the notice under Section 8 of the 'I & B Code', as apparent from last portion of Form - 3 & Form - 4, as quoted below: -

"6. The undersigned request you to unconditionally repay the unpaid

operational debt (in default) in full within ten days from the receipt of this letter failing which we shall initiate a corporate insolvency resolution process in respect of [name of corporate debtor].

Yours sincerely,

<i>Signature of person authorised to act on behalf of the operational creditor</i>
<i>Name in block letters</i>
<i>Position with or in relation to the operational creditor</i>
<i>Address of person signing</i>

16. From bare perusal of Form-3 and Form-4, read with sub-Rule (1) of Rule 5 and Section 8 of the 'I & B Code, it is clear that the 'Operational Creditor' can apply himself or through a person authorized to act on behalf of the 'Operational Creditor', who hold same position with or in relation to the 'Operational Creditor'. Thereby such person(s) authorized by 'Operational Creditor', holding position with or in relation to the 'Operational Creditor' can only apply.

17. In view of such provision we hold that an advocate / lawyer or Chartered Account or a Company Secretary or any other person in absence

of any authority by the 'Operational Creditor', and if such person do not hold any position with or in relation to the 'Operational Creditor', cannot issue notice under Section 8 of 'I & B Code', which otherwise can be treated as a lawyer's notice/pleader's notice, as distinct from notice under Section 8 of 'I & B Code'.

18. The demand notice/ invoice Demanding Payment under the I& B Code required to be issued in Form-3 or Form - 4. By the said notice, the 'Corporate Debtor' is to be informed of particulars of 'Operational Debt', with a demand of payment, with clear understanding that the 'Operational Debt' (in default), as claimed, is to be paid, unconditionally within ten days from the date of receipt of letter failing which the 'Operational Creditor' will initiate a Corporate Insolvency Process in respect of 'Corporate Debtor', as apparent from last paragraph no. 6 of notice contained in form - 3, and quoted above.

Only if such notice in Form - 3 or Form - 4 is served, the 'Corporate Debtor' will understand the serious consequences of non-payment of

'Operational Debt', otherwise like any normal pleader notice/ Advocate notice or like notice under Section 80 of C.P.C. or notice for initiation of proceeding under Section 433 of the Companies Act 1956, the 'Corporate Debtor' may decide to contest the suit/case if filed, as distinct Corporate Resolution Process, where such claim otherwise cannot be contested, except where there is an existence of dispute, prior to issuance of notice under Section 8.'

12. Learned counsel appearing on behalf of respondents tried to make a distinction between the aforesaid case of *'Macquarie Bank Limited'* and the present case on the ground that the notice in the said case was issued on behalf of the 'Operational Creditor', which was a bank, whereas respondents are individual ex-employees. But such distinction cannot be accepted, in view of the law laid down under the I&B Code. It is true that no authorisation on behalf of any Company or firm is required to be given, but the individual(s) are also required to give notice under Section 8 in Form-3 or Form-4 under their signatures with clear understanding and request to repay the unpaid 'Operational Debt' (in default) unconditionally, in full, within ten days from the receipt of the letter, with further intimation that on failure, the said employee(s)/ workmen shall initiate a Corporate Insolvency

Process in respect of the 'Corporate Debtor'. If such notice in Form-3 or Form-4 with the aforesaid stipulation is served on the 'Corporate Debtor', the 'Corporate Debtor' will understand the serious consequences of non-payment of 'Operational Debt', otherwise like any normal pleader notice/advocate notice or like notice under Section 80 of the Code of Civil Procedure, 1908 or notice for initiation of proceeding under the Industrial Disputes Act, 1947, the 'Corporate Debtor' may not take it seriously and may decide to contest the suit/case, if filed, before the appropriate forum. However, where the claim is made under Section 8 of I&B Code, in such case, the 'Corporate Debtor' will understand the seriousness that it cannot contest the claim, except in a case where a dispute has already been raised, prior to the issuance of notice under Section 8.

13. As the case of the appellant in all the appeals, is covered by the decision rendered in the case of *Macquarie Bank Limited (supra)*, we are not going into other aspects as to whether the respective claims made by the respondents are barred by limitation or there is a delay and laches on their part or there is any dispute in existence.

14. In view of the discussion as made above, we have no other option but to set aside the impugned order dated 13th June, 2017 passed by the Learned Adjudicating Authority, Chennai Bench in C.P. No. 478 of 2017, C.P. No. 479 of 2017 and C.P. No. 480 of 2017. The common order is accordingly set aside. .

15. In effect, order(s), if any, passed by the Learned Adjudicating Authority appointing any 'Interim Resolution Professional' or declaring moratorium, freezing of account and all other Order (s) passed by Adjudicating Authority pursuant to impugned order and. action, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling, for applications all such orders and actions are declared illegal and are set aside. The applications preferred by each of the respondents under Section 9 of the I&B Code are dismissed. Learned Adjudicating Authority will now close the proceedings. The appellant is released from all the rigour of law and is allowed to function independently through its Board of Directors with immediate effect.

16. Learned Adjudicating Authority will fix the fee of 'Interim Resolution Professional', if appointed and the appellant will pay the fees of the Interim Resolution Professional, for the period he has functioned. The appeals are allowed with the aforesaid observation and direction.

17. However, we make it clear that the appellant has given assurance that they will be paying the respondents three years' arrears of salary, if due, for the period prior to their retirement, taking into consideration any revision of salary, if any, and post-retirement benefits such as Provident Fund, Gratuity etc., if due to one or other

respondent. We hope and trust that the appellant will stick to its assurance given before this Appellate Tribunal and pay such admitted dues to the respondents.

18. All the appeals stand disposed of with the aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)

/ng/

(True Copy)





Annexure-A-2²⁷

ARUNA HOTELS LIMITED

CIN: L15421TN1960PLC004255

Date: 22.08.2017

Mr. D.Ramjee,
S/o V.R.Dorai,
No 2c, Jai Durga Apartments,
No.38/2, 1st Avenue,
Ashok Nagar,
Chennai-600 083.

Re: Company Appeal (AT) (Insolvency) No. 87 of 2017
Aruna Hotels Ltd. vs. D. Ramjee

Dear Mr. D. Ramjee,

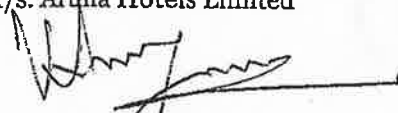
We refer to the Judgment passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi (NCLAT) on 02.08.2017 in the captioned matter.

In compliance with the directions given by the Hon'ble Tribunal, we are hereby forwarding you the two Demand Drafts (enclosed) of the amount equivalent to the 3 years of salary for the period prior to your retirement and the post-retirement benefits. The details of such Demand Drafts are as follows:

S.No.	Demand Draft In favour of	DD No.	Date	Amount	Drawn on	Payable at
1	D.Ramjee	454874	29.7.2017	Rs.18,00,000	HDFC Bank, R.K.Salai, Mylapore, Chennai	Chennai
2	D.Ramjee	362401	08.08.2017	Rs. 50,000	HDFC Bank, R.K.Salai, Mylapore, Chennai	Chennai

Thanking you.

M/s. Aruna Hotels Limited


Managing Director.
(V. Anbalagan)

HDFC BANK

PAYINST DRAFT

VALID FOR THREE MONTHS FROM THE DATE OF ISSUE

2 9 0 7 2 0 1 7

28

Ac Payee Not Negotiable

ON DEMAND PAY D. RAMJEE

RUPEES EIGHTEEN LAKH ONLY **

OR ORDER

₹ ***18,00,000.00

FOR HDFC BANK LTD.

Shankar 83234 Narayan 80272

R K Salai, Chennai Cent.Clg. : Chennai DRAWEE BRANCH 454874 R K Salai, Chennai ISSUING BRANCH

AUTHORISED SIGNATORIES Please sign above

⑈454874⑈ 000240000⑈ 999998⑈ 16

BANG DATA FORMS CTS 2010 6/17

HDFC BANK

PAYINST DRAFT

VALID FOR THREE MONTHS FROM THE DATE OF ISSUE

0 8 0 8 2 0 1 7

Ac Payee Not Negotiable

D RAMJEE

ON DEMAND PAY

RUPEES FIFTY THOUSAND ONLY **

OR ORDER

₹ *****50,000.00

FOR HDFC BANK LTD.

Shankar 83234 Narayan 80272

R K Salai, Chennai Cent.Clg. : Chennai DRAWEE BRANCH 362401 R K Salai, Chennai ISSUING BRANCH

AUTHORISED SIGNATORIES Please sign above

⑈362401⑈ 000240000⑈ 999998⑈ 16

BANG DATA FORMS CTS 2010 6/17

(True copy)

Shankar

RPAD *1 Courier*

29
Annexure-A-3

01/09/2017

Without prejudice

From,
D. Ramjee
2.C, Jai Durga Apartments
38/2 First Avenue,
Ashok Nagar,
Chennai-600 083

To,
The Managing Director,
Aruna Hotels Limited,
144/145, Sterling Road,
Nungambakkam
Chennai-600 034.

Sir,

Sub: NCLAT ORDER Dt.02.08.2017 – Regarding ARREARS OF SALARY &
Post Retirement Benefits such as provident fund, gratuity etc.

I am in receipt of your letter dated 22/08/2017 on 24/08/2017, enclosing two Demand Drafts, one for Rs.18,00,000/-[Rupees Eighteen lakhs only] and the other for Rs.50,000/-[Rupees fifty thousand only] totalling to Rs.18,50,000/-[Rupees Eighteen lakhs fifty thousand only]

The Hon'ble National Company Law Appellate Tribunal Bench at New Delhi issued its order dated 02/08/2017 and in paragraph 17 of its order had directed as follows:

"17. However, we make it clear that the appellant has given assurance that they will be paying the respondents three years arrears of salary, if due, for the period prior to their retirement, taking into consideration any revision of salary, if any and post – retirement benefits such as provident fund, gratuity etc., if due to one or other respondent. We hope and trust that the appellant will stick to its assurance given before this appellate tribunal and pay such admitted dues to the respondent."

I had filed a case before the Hon'ble National Company Law Tribunal on account of default in payment of admitted debts on account of arrears of incremental salary and post-retirement benefit such as gratuity, etc., aggregating to Rs.3,29,80,616 (including interest). When the matter came up for hearing before the Hon'ble National Company Law Appellate Tribunal, you gave an assurance to the Hon'ble NCLAT as has been recorded.

While your letter under reply admits that there have been arrears of salaries and other benefits that are due, your calculation sadly is woefully incorrect and belies your assurance given to the Hon'ble NCLAT. The calculation below is the correct calculation:

AN

WORKING AS PER THE ORDER DATED 02-08-2017 OF THE HON'BLE NCLAT, NEW DELHI							
D. RAMJEE							
	Financial year		No. of months	Revised salary	Amount payable for the year as per the revised salary		
A	ARREARS OF SALARY						
1	01-06-2010	31-03-2011	10	229992	2299920		2299920
2	01-04-2011	31-03-2012	12	252991	3035892		3035892
3	01-04-2012	31-03-2013	12	278290	3339480		3339480
4	01-04-2013	31-05-2013	2	306119	612238		612238
	Salary arrears for 3 years				9287530		9287530
B	POST RETIREMENT BENEFIT						
	Leave Salary due				546 days		5571366
	Gratuity due without ceiling						
	Date of joining				11-05-1964		
	Date of leaving				31-05-2013		
	Total years of service				49		
	Gratuity for 49 years				306119/26*15*49		8653749
	PF Contribution @ 12% from 01-11-2000 to 31-05-2013				151 months		1230808
	Total amount as per your assurance before NCLAT						24743452

You have offered me only a fraction of what you have repeatedly acknowledged and assured me over the years. You have placed me in this precarious position of extreme financial desperation, despite our continuous and loyal service to the Company and our acceptance to defer payment of our legitimate dues on your assurances of full settlement.

I request you to demonstrate your bona fides by expressing your readiness and willingness within one week's time to make the balance payment of Rs.2,28,93,452/- [Rupees two crore twenty eight lakhs ninety three thousand four hundred and fifty two only) in compliance of the Hon'ble National Company Law Appellate Tribunal order dated 02.08.2017.

For the sake of clarity, I am are reserving my right to accept the payment as per your assurances to the Hon'ble NCLAT or reject, and this response is without prejudice to my remedies in law to seek the full amount due and payable to me. This reply is only to determine whether or not you are willing to carry out full and just compliance with your assurance recorded in the Order dated 02.08.2017, so that I can take appropriate decision.

Yours sincerely



D.Ramjee

(True Copy)



RPAD
/ Without Prejudice/

31
Annex-A-4

12.09.2017

From,

The Managing Director,
Aruna Hotels Limited,
No 144-145, Sterling Road,
Nungambakkam, Chennai 600 034.

To,

Mr. D. Ramjee,
2. C Jai Durga Apartments,
No 38/2 First Avenue,
Ashok Nagar,
Chennai-600 083.

Sir,

We are surprised to have received a letter from you dated 01.09.2017, claiming a compensation over and above that which has been approved and granted to you, which you have received and acknowledged in your letter.

The case was taken before Hon'ble NCLAT, last month and as per the order of Hon'ble NCLAT, your claim as per what you are once again demanding in your letter given as reference above has already been rejected and dismissed by the Hon'ble NCLAT. Yet it was mentioned by the Hon'ble NCLAT that "**DUES IF ANY**" in terms of outstanding salary for the period of one year may be compensated to you. However due to compassionate grounds we have given you an amount which is, not one year salary, but three years salary drawn by you as per our company records. The calculation is as follows;

Last Drawn Average Monthly Salary	Rs. 50,000/- Per Month
3 years Salary	Rs. 18,00,000/- (i.e., 50,000* 36 Months)
One Month Earned Leave Salary	Rs. 50,000/-
Total Amount	Rs. 18,50,000/-

It must be noted that this is the maximum amount that can be paid out to you, as per legally approved and sanctioned

[Handwritten Signature]



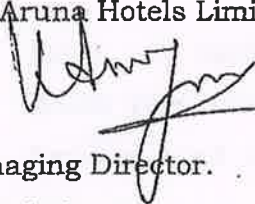
processes. Had there been any merit whatsoever to your claim, we are sure the Hon'ble NCLAT; New Delhi would have certainly looked into it. However, the order passed as per the Hon'ble NCLAT order is not in your favour which you are well aware of. Yet, respecting the views and order of the Hon'ble NCLAT we have given you the maximum compensation mentioned above and no further amount is due to you as per our company records.

So, you are requested to please accept what has been paid to you and refrain from any further claims of arrears of salary. We hope you will respect the order passed by the Hon'ble NCLAT, New Delhi like we have done.

Thank You

Warm Regards,

For Aruna Hotels Limited,


Managing Director.
(V. Anbalagan)



(True copy)



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 187 OF 2019

N. SUBRAMANIAN

...Appellant

Versus

M/S ARUNA HOTELS LTD. & ANR.

...Respondents

WITH

CIVIL APPEAL DIARY NO. 34841 OF 2018

CIVIL APPEAL DIARY NO. 34836 OF 2018

CIVIL APPEAL DIARY NO. 34839 OF 2018

J U D G M E N T

R.F. Nariman, J.

CIVIL APPEAL NO. 187 OF 2019

1. I.A. No. 163654 of 2019 for intervention is dismissed.
2. The present appeal is filed by an erstwhile employee of the Corporate

Signature Not Verified

Digitally signed by R
Natarajan
Date: 2024.03.01
15:29:55 IST
Reason:

Debtor, i.e. the Respondent No.1 Company. The Appellant joined the Corporate Debtor as a Personal Assistant on 01.01.1983, and over the

years received several promotions, including to Manager-Administration. His final designation before he left from service in 2013 was Public Relations Manager.

3. This appeal arises from an application that was made by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 ["IBC"] dated 21.07.2017. In this application, the Appellant averred that a sum of Rs.1.87 Crores was owed to him, being the arrears of salary from the year 1998 till 2013 when he retired from service, and that several acknowledgments of liability have been given of the arrears payable, the last of which was by a letter dated 30.09.2014 by the erstwhile Managing Director of the Company. The Corporate Debtor replied to the aforesaid Section 9 application denying any liability and, in any case, stated that claims that are made by the Appellant are time-barred. The National Company Law Tribunal ["NCLT"] in its judgment dated 17.11.2017, after setting out the facts and, in particular, setting out the acknowledgement of liability letter dated 30.09.2014, went on to state that the principal amount of Rs. 1.06 Crores being admitted, a case has been made out for admission. It also referred to a certain "payment voucher" (which was relied upon by the learned counsel for the Company), stating that this voucher was merely a red-herring, and in any case could not be relied

upon. According to the NCLT, even a cursory look at the said voucher by the naked eye would show that the name of the Appellant has been filled by somebody different from the person who has filled – in a different handwriting – that the amount paid is in “full and final” settlement of the arrears of salary. It was also held that this payment voucher was only proof of payment of arrears of salary of 6 months’ payment @ Rs.35,000/- p.m. which was not paid on the due dates, but which was paid in one go. In any event, the NCLT held that this voucher was not part of the claim of the Appellant.

4. The NCLT then referred to a Civil Suit that was filed on 06.07.2017 by the Corporate Debtor one week after the notice under Section 8 of the IBC was issued by the Appellant (i.e. on 29.06.2017). The suit contained the following prayers:

“a) declaring the notice/letters dated 30.09.2006, 22.01.2013, 30.06.2013, 31.03.2014 and 30.09.2014 alleged to have been issued by 1st defendant as null and void and will not bind the plaintiff,

b) grant permanent injunction restraining the 2nd defendant from relying on or claiming against the plaintiff based on the alleged letters/notices dated 30.09.2006, 22.01.2013, 30.06.2013, 31.03.2014 and 30.09.2014.”

The NCLT went on to state that the suit was a desperate attempt of the Company to get out of acknowledgements of liability that were due, and appears to be "*mala fide*, fraudulent and mischievous".

5. Mr. Ritin Rai, learned Senior Advocate appearing for the Appellant, informs us that this suit has been dismissed for non-prosecution. We are informed that an application to restore the suit to the file is pending.

6. Referring to the point of limitation, the NCLT held in favour of the Appellant, relying upon the acknowledgement dated 30.09.2014, as a result of which, it admitted the petition and appointed an Interim Resolution Professional and imposed a moratorium under Section 14 of the IBC. In the appeal filed by a shareholder of the Corporate Debtor (i.e. Respondent No.2 before us), the National Company Law Appellate Tribunal ["NCLAT"] referred to a letter by the Employees Provident Fund Organisation dated 13.04.2016 and stated that the Appellant's claim has been settled as a result of that letter. It then, in a cryptic fashion, went into the point of limitation and recorded:

"7. The Respondent - ('Operational Creditor') himself has pleaded that the salary is due since 1998 which was not paid but delay of raising claim of arrears of salary for the period 1998 to 2016 has not been explained.

9. In the present case as we find that there is an 'existence of dispute' about arrears of salary and the Respondent has also

failed to explain the delay in making claim of arrears alleged to be done since 1998 to 2016 (delay of about 18 years), we hold that the application under Section 9 preferred by the Respondent was not maintainable.”

7. For these reasons, including the fact that according to the NCLAT, a dispute has been raised, the NCLAT held that the NCLT was incorrect in admitting the matter, and thus allowed the appeal and set aside the NCLT order.
8. Mr. Rai, learned Senior Advocate appearing for the Appellant, has referred to three acknowledgements that are on record. The first is *vide* a letter dated 30.09.2006 acknowledging arrears of payment of salary from 01.01.2000 till the actual date the Appellant was relieved from service. The second is a letter dated 30.06.2013 stating that the “accounts will be settled” as the Appellant had now been retired from service. He emphasised the third letter, dated 30.09.2014, which had appended to it the list of the exact amount due from 1998 till the date of retirement which amounted to roughly Rs.1.06 Crores. According to him, all these acknowledgements would show that amounts due and payable to the Appellant cannot be said to be barred by limitation. Equally, the Employees Fund Organisation letter is only a red-herring, and has nothing to do with the facts of this case, and it is clear that given the

acknowledgements of liability, there is no question of any "dispute". On the contrary, this admitted principal amount of Rs.1.06 Crores is due to the Appellant.

9. Mr. Mohan Parasaran, learned Senior Advocate for the Respondent Company, has argued that a new management took over the Company in 2015, and the amounts due to the Appellant were neither reflected in the annual reports of the Corporate Debtor nor in a Due Diligence Report dated 27.07.2015. What is clear from a reading of the Report, together with the annexures thereto, is that 77 employees were owed various amounts which was promised to be paid by the new management. What is conspicuous by its absence is the name of the Appellant in the aforesaid annexures, and therefore, according to Mr. Parasaran, no amount was owed to the Appellant. In any case, he argued that the NCLAT appreciated the facts correctly, and the claim of the Appellant is clearly time-barred. As an alternative argument, if the Court were to set aside the NCLAT judgment, it ought to remit the same for hearing on whether the NCLT was correct on merits in admitting the Section 9 petition.
10. Having heard learned counsel for both parties, what becomes clear is the fact that from the date of the last acknowledgement i.e. 30.09.2014

till the date on which the petition before the NCLT was filed i.e. 27.07.2017, three years have not elapsed. Therefore, at least to the extent of an acknowledgement made by the then Managing Director of the Corporate Debtor, the arrears of salary due for a period of at least 3 years prior to 30.09.2014 would certainly be within limitation, and therefore payable to the Appellant. This being the case, it is clear that the NCLT judgment is correct in admitting the Section 9 application by the Appellant. Mr. Rai correctly points out that the Employees Provident Fund letter dated 13.04.2016 was only a red-herring, and has nothing to do with the arrears of salary which had to be paid. It is clear that there is an acknowledgement of liability, which therefore shows that there is no "dispute" as to amounts owed to the Appellant. The impugned NCLAT judgment is accordingly set aside. Consequently, the NCLT judgment is restored to the file. The alternative argument of Mr. Parasaran also stands dismissed in view of what has been held by this judgment.

11. The Appeal is thus allowed.

CIVIL APPEAL DIARY NO. 34841 OF 2018, CIVIL APPEAL DIARY NO. 34836 OF 2018 & CIVIL APPEAL DIARY NO. 34839 OF 2018

12. Permission to file the Civil Appeals are rejected.

.....J.
[ROHINTON FALI NARIMAN]

.....J.
[B.R. GAVAI]

.....J.
[HRISHIKESH ROY]

New Delhi;
March 03, 2021.

(True Copy)



ITEM NO.10

Court 3 (Video Conferencing)

SECTION XVII 41

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Miscellaneous Application No. 480/2021 in C.A. No. 187/2019

N.SUBRAMANIAN

Petitioner(s)

VERSUS

M/S. ARUNA HOTELS LTD & ANR.

Respondent(s)

(FOR ADMISSION and IA No.37894/2021-APPROPRIATE ORDERS/DIRECTIONS
and IA No.37900/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/
FACTS/ANNEXURES)

Date : 19-03-2021 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Ritin Rai, Sr. Adv.
Mr. S. Santanam Swaminadhan, Adv.
Mr. Kartik Malhotra, Adv.
Ms. Abhilasha Shrawat, Adv.
Mrs. Aarthi Rajan, AOR

Mr. Balaji Srinivasan, AOR

For Respondent(s) Mr. Ramaswami Subramanian, Adv.
Mr. Abhishek Singh, Adv.
Mr. Arnav Singh, Adv.
Mr. Vipin Kumar Jai, AOR

Mr. A. Karthik, AOR

UPON hearing the counsel the Court made the following
O R D E R

I.A.No. 37894/2021

The learned counsel for the applicant seeks leave to withdraw

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.

(JAYANT KUMAR ARORA)
COURT MASTER

(NISHA TRIPATHI)
BRANCH OFFICER

(True Copy)



Annexure-A-7
43

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI
(APPELLATE JURISDICTION)**

Company Appeal (AT) (CH) (Ins) No.48 of 2021

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

[Appeal arising out of the Impugned Order dated 22.04.2021, passed in IA/361/CHE/2021 in
MA/06/2021 in CP/597/(IB)/2017), passed by the Adjudicating Authority
(National Company Law Tribunal, Division Bench, Court No.1, Chennai)]

In the matter of:

1. Mr. K.N. Rajakumar
Suspended Director, Aruna Hotels Ltd.
No. 145, Sterling Road
Nungambakkam, Chennai- 600034. ...APPELLANT

V.

1. V. Nagarajan
Resolution Professional, M/s. Aruna Hotels Limited
New No. 29, Kavarai Street
West Mambalam, Chennai- 600033 ...RESPONDENT 1

2. N. Subramanian
No 4/33, Officers Colony,
1st Street, Flat No. 6 Corner Enclave,
Rajaram Mehta Nagar,
Aminjikarai, Chennai- 600029 ...RESPONDENT 2

3. The Manager
HDFC Bank
Dr. Radhakrishnan Salai
Chennai- 600004 ...RESPONDENT 3

Present:

For Appellant : Mr. P.H.Aravindh Pandiyan, Sr. Counsel
For Sandeep Kumar Ambalavanan, Advocate
For Respondent No.1 : Mr.R. Subramanian, Advocate,
For Respondent No.3 : Mr.C. Mohan, Advocate, King and Patridge (For
Financial Creditor)

J U D G M E N T

44

Heard Both sides.

2. According to the Learned Counsel for the Appellant the Company Appeal (AT) (INS) No.48 of 2021 is preferred against an Impugned Order dated 22.04.2021 in I.A.No.361CHE/2021 in M.A.No.6/2021 in C.P./IB/CHE/597 of 2017 passed by the Adjudicating Authority [National Company Law Tribunal, Division Bench (Court No.1), Chennai].

3. The Learned Counsel for the Appellant points out that the Adjudicating Authority in the Impugned Order dated 22.04.2021 in I.A.No.361CHE/2021 in M.A.No.6/2021 in C.P./IB/CHE/597 of 2017 had among other things had directed the 'Resolution Professional 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 provide under the Provisions of IBC, 2016.' Further, the Adjudicating Authority in the Impugned Order had directed the IRP/RP to 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 and the matter was directed to be posted on 03.05.2021 under the caption 'urgent listing' along with other connected Applications.

4. Challenging the Impugned Order dated 22.04.2021 in I.A.No.361CHE/2021 in M.A.No.6/2021 in C.P./IB/CHE/597 of 2017 passed by

the Adjudicating Authority [National Company Law Tribunal, Division Bench (Court No.1)Chennai], the Learned Counsel for the Appellant submits that the Adjudicating Authority should not have directed the Resolution Professional to call for a meeting of the 'Committee of Creditors of Corporate Debtor' constituting of members, who originally constituted the 'CoC' during the year 2017, soon after the order of admission of CIRP of the Corporate Debtor, without taking into account the present status of the Financial and Operational Creditors and claims filed to that extent.

5. The Learned Counsel for the Appellant contends that the Adjudicating Authority had not appreciated the fact that most of the Members who initially constituted the 'CoC' in the year 2017, soon after the order of admission of CIRP of the Corporate Debtor, are no longer 'Creditors' of the 'Corporate Debtor' as on the date of Order and hence, had committed an error in directing the Resolution Professional to convene a 'CoC' including such Members.

6. The Learned Counsel for the Appellant brings to the notice of this Tribunal that 961 days had elapsed between the Judgment of the National Company Law Appellate Tribunal, dated 16.07.2019 in Company Appeal (AT) (INS) 290 of 2017 whereby 'CIRP' of Corporate Debtor was setaside and the Order of the Hon'ble Supreme Court dated 03.03.2021 in Civil Appeal No.187, whereby 'CIRP' of the Corporate Debtor restored and the Members of 'Committee of Creditors' should be updated based on the submissions of claims and withdrawal claims, as specified under the I&B Code, 2016.

7. It is represented on behalf of the Appellant that the Adjudicating Authority ought to have considered Regulation 12(A) and 13 of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 whereby both the Creditor and Resolution Professional of any Corporate Debtor ought to update the 'status' of claims of the 'Corporate Debtor'.

8. The other argument projected on the side of the Appellant is that the claim of 3rd Respondent/HDFC Bank dated 08.04.2021 should have been considered by the Adjudicating Authority before passing the Impugned Order because of the fact that the 3rd Respondent/Bank is the present 'Financial Creditor' of the 'Corporate Debtor'.

9. The prime stand of the Appellant is that soon after the order of admission of 'CIRP' of the 'Corporate Debtor', the Members who originally constituted the 'CoC' in 2017, are no longer 'Financial Creditors' and the said fact was pleaded by the 'Resolution Professional' himself, the 1st Respondent in his Affidavit dated 27.03.2021 filed in M.A.NO.6/2021 in C.P./IB/CHE/597 of 2017.

10. The Learned Counsel for the Appellant contends that the Members who originally constituted the 'Committee of Creditors' in 2017, soon after the admission order of 'CIRP' of the 'Corporate Debtor' are no longer 'Financial Creditors' of the 'Corporate Debtor' and placing for voting Form FA Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate persons) Regulations, 2016 for withdrawal of the 'CIRP' of the 'Corporate Debtor' before such members who are third parties today, to the affairs of the 'Corporate Debtor' is against the Letter and Spirit of the Code itself.

11. The Learned Counsel for the Appellant refers to the Judgment of this Tribunal in Company Appeal (AT)(Ins)No.519 of 2020 in Rajinish Jain V. Manoj Kumar Singh – I.R.P. (struck off as per Order dated 24.06.2020) and two others wherein at Paragraphs No.54.4 and 59 it is observed as under:

54.4) "After Adjudicating Authority passed Interim Order, Resolution Professional in 7th Meeting of CoC (Annexure A8 Page 116 @ Page 127) took up Agenda 13 "Discussion/Approval for not considering M/s. BVN Traders as Financial Creditor..." It is surprising and interesting to note that Members recorded that "despite the Order passed by Hon'ble NCLT Allahabad the CoC is

of the view that **they no longer wish to continue M/s BVN Traders in the category of the “Financial Creditor”** in the CoC and want to review their decisions in this regard.” “No Longer wish”? This is strange. This is the danger due to which collating is not left to CoC. As mentioned, this was taken up, and resolutions were passed in the 7th Meeting and also 8th Meeting dated 18.2.2020 (Annexure A9) to resolve and oust BVN from CoC. Thus CoC sat in Appeal over Impugned Order and passed resolutions to the contrary, which cannot be said to be legal.”

59. “Based on the above discussion, we clarify and hold that during CIRP, the IRP is authorised to collate the claims, and based on that he has empowered to constitute the Committee of Creditors. We hold that the Resolution Professional may add to existing claims of claimants already received, or admit or reject further Claims and update list of Creditors. But after categorisation of a claim by the IRP/Resolution Professional we hold that they cannot change the status of a Creditor. For example, if the Resolution Professional has accepted a claim as a Financial Debt and Creditor as a Financial Creditor, then he cannot review or change that position in the name of updation of Claim. It is also to be clarified that while updating list of Claims the Resolution Professional, can accept or reject claims which are further received and update list.”

12. The Learned Counsel for the Appellant takes a plea that ‘Form’ cannot control the ‘Act’ and cites the decision of Hon’ble Supreme Court Life Insurance Corporation of India V Escorts Ltd. & Ors reported in AIR 1986 at Page 1370.

13. The Learned Counsel for the Appellant adverts to Section 21(2) of the I & B Code which enjoins that ‘the committee of creditors’ shall comprise all financial creditors of the corporate debtor etc. Also, the Learned Counsel for the Appellant refers to Regulation 12 (Submission of proof of claims) Regulation 13 (Verification of Claims) and Regulation 14 (Determination of amount of claim)

and contends that when the 'Resolution Professional' comes across additional information warranting such revision, shall revise the amounts of claims admitted etc.

14. The Learned Counsel for the Appellant points out Section 3(8) of the Code which speaks of 'Corporate Debtor'. Also, the Learned Counsel for the Appellant refers to Section 5(8) of the Code which speaks of 'Financial Debt' and also Section 5(7) of the Code which deals with 'Financial Creditor'.

15. The Learned Counsel for the Appellant emphatically submits that the Appellant will submit 'Form A' and the 'Bank Guarantee' today itself and this can be taken note of by the 1st Respondent/Resolution Professional.

16. Per Contra, it is the submission of Learned Counsel for the 1st Respondent/Resolution Professional that on 01.05.2021 the 'Committee of Creditors' meeting takes place at 12 Noon and further that 'Form FA' and 'Bank Guarantees' were not furnished by the Appellant. Moreover, it is projected on the side of the 1st Respondent that the 'Resolution Professional' will act as per order of the Tribunal dated 22.04.2021 and that voting will be done on 01.05.2021 and the decision in this regard will be conveyed to the Tribunal on 03.05.2021.

17. The Learned Counsel for the 1st Respondent contends that 'Form C' is a part of CIRP Regulation which makes it necessary that the 'Claimant' set out the details and then give a declaration supported by verification and that the said 'Form C' is to be submitted by the 'Claimant' like that of the HDFC Bank.

18. The Learned Counsel for the 1st Respondent refers to 12(A) of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016, which enjoins that a 'Creditor' shall update its claim as and when the claim is satisfied, partly or fully from any source in any manner, after the Insolvency commencement date.

19. The Learned Counsel for the 1st Respondent submits that the 12(A) Application was filed on 22.03.2021, submitted to the 1st Respondent and Form FA was given on 22.03.2021 and since the 'Bank Guarantee' was not given it was returned and the 1st Respondent can revise the amounts of claims admitted in terms of Regulation 14(2).

20. The Learned Counsel for the 1st Respondent contends that the Impugned Order of the Tribunal dated 24.11.2021 is correct and that the 1st Respondent will act as per the Impugned Order of the Tribunal because of the fact that the 'CoC' meeting is to take place on 01.05.2021 12.00 Noon and that the voting will be done and the result of the decision will be conveyed to the Tribunal on 03.05.2021.

21. The Learned Counsel for the 3rd Respondent/Bank contends that the 3rd Respondent/Bank had funded money to the 'Corporate Debtor' and balance of Rs.36 Crores and odd and that CIRP was not in place at the time of funding of money and in fact, the 3rd Respondent/Bank should be included as a 'Financial Creditor'. Furthermore, the interest of 3rd Respondent/Bank is 'Paramount' and therefore it is to be included as 'Financial Creditor' along with others.

22. The Learned Counsel for the 3rd Respondent/Bank submits that the 3rd Respondent/Bank is not an interim financier and that the 'Corporate Debtor' is functioning from 2017 till date.

23. By way of Reply, the Learned Counsel for the Appellant submits that Southern Airfurane Industries Ltd. and kges Residency P Ltd had withdrawn their claims entirely, Mr.Rohit S Bajaj (Sl.No.1 Creditor) had withdrawn one of the two claims fully and had opted to withdraw the other claim under 'Form C' as 'Financial Creditor' etc. (vide Page 1046 Vol IV of the Paper Book in Dairy No.415 dated 29.04.2021).

24. The Learned Counsel for the Appellant contends that against the 'Resolution Professional' a fine of Rs.10,000/- was imposed and that he is not neutral and that apart the 'Disciplinary committee of ICSI Institute of Insolvency Professional' had rendered a finding against him.

25. The Learned Counsel for the 1st Respondent submits that the Company is not in operation and there is no business from 2017 till today and that Aruna Hotel is not running i.e. not in operation and that the 3rd Respondent/Bank will have first charge.

26. It is to be pointed out that when once the 'Committee of Creditors' is/was formed, the 'Resolution Professional' cannot alter the same. A 'Resolution Professional' has no 'Adjudicatory Power' under the I & B Code. In fact, the 'Corporate Debtor' was admitted into CIRP by the Tribunal on 17.11.2017. However, the Appellate Tribunal on 16.07.2018 had set-aside the Order of the Tribunal. On 03.03.2021, the Hon'ble Supreme Court of India had set-aside the Judgment of the Appellate Tribunal. On 19.03.2021, the Hon'ble Supreme Court in Miscellaneous Application No.480/2021 in CA 187/2019 in the matter of N.Subramanian v Aruna Hotels Ltd. & Anr. (IA 37894/2021) had granted liberty to withdraw the application with liberty to approach the 'CoC' for settlement under Section 12A of the IBC.

27. It comes to be known that the 1st Respondent/Resolution Professional on 07.03.2021 had demanded action from the Suspended Directors and the Statutory Auditors by sending messages through *E-mail* and *Whatsapp* modes, but there was no response. The 'CIRP' is more than three years old.

28. On a careful consideration of the respective contentions advanced on either side, this Tribunal is of the considered view that the 'Resolution Professional' has no 'Adjudicatory Power' under the I & B Code, 2016 and further that when once the 'Committee of Creditors' is/was formed, the 'Resolution Professional' cannot

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change the 'Committee of Creditors'. Suffice it for this Tribunal to make a pertinent mention that the Resolution Professional/1st Respondent cannot constitute a 'Committee of Creditors' afresh, in negation of the earlier constituted 'Committee of Creditors'.

29. Be that as if may, in the light of foregoings, and also this Tribunal on going through the Impugned Order dated 22.04.2021 in I.A./361/CHE/2021 in M.A.6/2021 in CO/IB/CHE/597 of 2017 passed by the Adjudicating Authority comes to a consequent conclusion that the observation made inter-alia to the effect that 'CoC' constituted presently by the IRP/RP in derogation of the order passed by it shall stands suspended and shall not exercise any of the powers as provided under the Provisions of IBC, 2016 and the directions issued to the IRP/RP to comply with the directions therein within a period of 10 days from the date of the order and to report before it about the outcome of the CoC meeting required to be called and convened are free from legal infirmities. Consequently, the instant Appeal fails.

30. In fine, the present Company Appeal AT (CH) (INS) 48 of 2021 is dismissed. No Costs. I.A.106/2021 (Stay Application) is dismissed.

[Justice Venugopal M]
Member (Judicial)

[V.P. Singh]
Member (Technical)

30.04.2021
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(True Copy)



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

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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

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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:

Sl.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

(True copy)



Annexure-A-9 53

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT-I)
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH,
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 06.07.2021 at 10.30 A.M
THROUGH VIDEO CONFERENCING**

**PRESENT: SMT. R.SUCHARITHA, MEMBER (JUDICIAL)
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)**

**IA/MA/IBA/TCP/TCA/CP/CA No : IA/535/CHE/2021 IN IA/536/CHE/2021 IN CP/597/IB/2017
NAME OF PETITIONER : N Krishnan
NAME OF RESPONDENT : V Nagarajan (RP) of M/s Aruna Hotels Ltd & Another
SECTION : 60(5) of IBC 2016 R/w Regulation 30A of IBBI**

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**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT-I)
CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH,
NATIONAL COMPANY LAW TRIBUNAL, HELD ON **06.07.2021** at **10.30 A.M**
THROUGH VIDEO CONFERENCING

**PRESENT: SMT. R.SUCHARITHA, MEMBER (JUDICIAL)
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)**

IA/MA/IBA/TCP/TCA/CP/CA No : IA/536/CHE/2021 IN CP/597/IB/2017
NAME OF PETITIONER : N Krishnan
NAME OF RESPONDENT : V Nagarajan (RP) of M/s Aruna Hotels Ltd & Another
SECTION : 60(5) of IBC 2016 R/w Regulation 30A of IBBI

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**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT-I)
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH,
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 06.07.2021 at 10.30 A.M
THROUGH VIDEO CONFERENCING**

**PRESENT: SMT. R.SUCHARITHA, MEMBER (JUDICIAL)
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)**

IA/MA/IBA/TCP/TCA/CP/CA No : IA/539/CHE/2021 IN IA/541/CHE/2021 IN CP/597/IB/2017
NAME OF PETITIONER : C Ganapathy
NAME OF RESPONDENT : V Nagarajan (RP) of M/s Aruna Hotels Ltd & Another
SECTION : 60(5) of IBC 2016 R/w Regulation 30A of IBBI

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**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT-I)
CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH,
NATIONAL COMPANY LAW TRIBUNAL, HELD ON **06.07.2021 at 10.30 A.M**
THROUGH VIDEO CONFERENCING

**PRESENT: SMT. R.SUCHARITHA, MEMBER (JUDICIAL)
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)**

IA/MA/IBA/TCP/TCA/CP/CA No : IA/541/CHE/2021 IN CP/597/IB/2017
NAME OF PETITIONER : C Ganapathy
NAME OF RESPONDENT : V Nagarajan (RP) of M/s Aruna Hotels Ltd & Another
SECTION : 60(5) of IBC 2016 R/w Regulation 30A of IBBI

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**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT-I)
CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH,
NATIONAL COMPANY LAW TRIBUNAL, HELD ON **06.07.2021 at 10.30 A.M**
THROUGH VIDEO CONFERENCING

**PRESENT: SMT. R.SUCHARITHA, MEMBER (JUDICIAL)
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)**

IA/MA/IBA/TCP/TCA/CP/CA No : IA/542/CHE/2021 IN IA/540/CHE/2021 IN CP/597/IB/2017
NAME OF PETITIONER : D Ramjee
NAME OF RESPONDENT : V Nagarajan (RP) of M/s Aruna Hotels Ltd & Another
SECTION : Rule 11 of NCLT Rules 2016

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**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT-I)
CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH,
NATIONAL COMPANY LAW TRIBUNAL, HELD ON **06.07.2021 at 10.30 A.M**
THROUGH VIDEO CONFERENCING

**PRESENT: SMT. R.SUCHARITHA, MEMBER (JUDICIAL)
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)**

IA/MA/IBA/TCP/TCA/CP/CA No : IA/540/CHE/2021 IN CP/597/IB/2017
NAME OF PETITIONER : D Ramjee
NAME OF RESPONDENT : V Nagarajan (RP) of M/s Aruna Hotels Ltd & Another
SECTION : 60(5) of IBC 2016 R/w Regulation 30A of IBBI

- 8) IA/535/CHE/2021 in IA/536/CHE/2021 in CP/597/IB/2017
- 9) IA/536/CHE/2021 in CP/597/IB/2017
- 10) IA/539/CHE/2021 in IA/541/CHE/2021 in CP/597/IB/2017
- 11) IA/541/CHE/2021 in CP/597/IB/2017
- 12) IA/542/CHE/2021 in IA/540/CHE/2021 in CP/597/IB/2017
- 13) IA/540/CHE/2021 in CP/597/IB/2017

Learned Counsel for the Applicants B. Dhanaraj and Learned Counsel for the 1st Respondent Mr. R. Subramaniam, is present through video conferencing mode.

IA/536/CHE/2021, IA/539/CHE/2021 and IA/542/CHE/2021 are urgent Applications seeking for urgent hearing of IA/535/CHE/2021, IA/541/CHE/2021 and IA/540/CHE/2021 respectively. Since the main Applications are listed in today's cause list along with these Urgent Applications, IA/536/CHE/2021, IA/539/CHE/2021 and IA/542/CHE/2021 stands **closed**.

IA/535/CHE/2021, IA/540/CHE/2021 and IA/541/CHE/2021 are applications filed by the Operational Creditor's in relation to the Corporate Debtor viz. Aruna Hotels Limited. The relief as sought for in all the Applications are one and the same. The reliefs as sought for by the Applicants are extracted hereunder;

- a. Set aside the Resolution passed in 8th CoC meeting dated 25.05.2021 to file 12A Application for withdrawal of CP/597/IB/2017 as null and void.
- b. Direct the Committee of Creditors, 2nd Respondent herein, to consider the admitted claim of this Applicant / Operational Creditor, prior to exercising their voting rights for filing a Sec. 12A Application before this Hon'ble Adjudicating Authority and
- c. Pass such further or other orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of this case and thus render justice.

It has been brought to the notice of this Tribunal that this Adjudicating Authority vide its order dated 04.06.2021 passed in IA/361/CHE/2021, by taking into consideration the Resolution passed by the CoC on 25.05.2021 under Section 12A of IBC, 2016 and for the reasons recorded therein, has passed an order for withdrawal of the CIRP in relation to the Corporate Debtor. Thus powers and management of the Corporate Debtor are handed over the Directors of the Corporate Debtor by virtue of the said order dated 04.06.2021 and as on date the Resolution Professional and the CoC in relation to the Corporate Debtor has become *functus officio*.

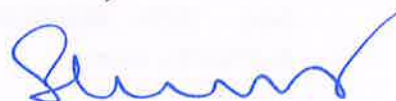
Hence, the relief as sought for by the Applicants in the present Applications have become infructuous. Accordingly, IA/535/CHE/2021, IA/540/CHE/2021 and IA/541/CHE/2021 stands **dismissed as infructuous**. Files to record.

-sd-
ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond

(True Copy)



ITEM NO.13

Court 2 (Video Conferencing)

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Civil Appeal No(s). 1792/2021

K.N RAJAKUMAR

Appellant(s)

VERSUS

V NAGARAJAN & ORS.

Respondent(s)

(IA No.62773/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.62772/2021-STAY APPLICATION and IA No.62771/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 62773/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 63112/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 62771/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 62772/2021 - STAY APPLICATION)

WITH

Diary No(s). 15117/2021 (XVII)

(FOR ADMISSION and I.R. and IA No.81622/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.81623/2021-STAY APPLICATION and IA No.81624/2021-EXEMPTION FROM FILING AFFIDAVIT and IA No.81625/2021-INTERVENTION/IMPLEADMENT and IA No.81621/2021-PERMISSION TO FILE APPEAL)

Date : 23-07-2021 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE B.R. GAVAI

For Appellant(s)

Mr. Balaji Srinivasan, AOR
Ms. Garima Jain, Adv.
Ms. Pallavi Sengupta, Adv.
Mr. Aishwarya Choudary, Adv.
Ms. Aakriti Priya, Adv.
Mohd. Shahrukh, Adv.

Mr. Ritin Rai, Sr. Adv.
Mr. S. Santanam Swaminadhan, Adv.
Mr. Kartik Malhotra, Adv.
Ms. Abhilasha Shrawat, Adv.
Mrs. Aarthi Rajan, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Diary No(s). 15117/2021 [ITEM NO. 13.1]

Permission to file appeal is granted.

Issue notice.

In the meantime, there shall be stay of operation and implementation of the impugned Judgment and stay of further proceedings taken out in pursuance of the impugned order.

Civil Appeal No. 1792/2021 [ITEM NO. 13]

List along with Diary No. 15117/2021.

(JAYANT KUMAR ARORA)
COURT MASTER

(NISHA TRIPATHI)
BRANCH OFFICER

(True Copy)



23.07.2021

To

1. Mr. Susainadar David,
B1 R C PRINCESS ROYAL APPARTMENTS
44-45 SIRUVALLUR HIGH ROAD, PERAMBUR,
CHENNAI, Tamil Nadu Pincode: 600 011.
2. Mr. Suyambu Narayanan
NO 9A VALLALAR STREET,VELACHERY
CHENNAI - 600 042.
3. Mr. K.N. Rajakumar
29A, 3RD STREET THANGAM COLONY
ANNANAGAR WEST
CHENNAI, Tamil Nadu
Pinocde: 600 040
4. Mr. Freeda Gnanaselvam Kanagiah
PLOT NO.5, SALAIMUTHU NAGAR 1ST CROSS STREET, ARASARADI
MADURAI- 625 016.
5. Mr. Ramasamy Muralidharan
NO.16/19, ANDAVAR NAGAR, 5TH STREET, KODAMBAKKAM
CHENNAI, Tamil Nadu
Pincode: 600 024.

Key Managerial Persons

1. Mr. P. Nagarajan, CFO
2. Ms. Kumar Lakshmi, Company Secretary

Sir,

**M/s ARUNA HOTELS LTD (CIN: L15421TN1960PLC00425) now under CIRP under the
Insolvency and Bankruptcy Code 2016 with revival of order of NCLT Chennai
dated 17.11.2017 vide order dated 23.07.2021 of Hon'ble Supreme Court of India**

**Demand under Section 19 of the Code read with Section 18 of the Code and the
Regulations there under**

I am the Resolution professional in respect of M/s Aruna Hotels Ltd with of you were
Directors/ Key Management Personnel

V.NAGARAJAN
INSOLVENCY RESOLUTION PROFESSIONAL

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As you are aware the CIRP in respect of the said company was commenced on 17.11.2017 as per order dated 17.11.2017 Hon'ble NCLT Chennai Bench in CP/597/IB/CB/2017 and since then I was initially the Interim Resolution Professional and thereafter the Resolution Professional in respect of the Corporate Debtor.

While by order dated 16.07.2018 the Hon'ble NCLAT, New Delhi had set aside the order of the NCLT commencing CIRP. The Hon'ble Supreme Court of India had on 03.03.2021 (Civil Appeal No. 187 of 2019) set aside the order of NCLAT and has restored the order of Hon'ble NCLT, Chennai.

Thereafter by order dated 22.04.2021 of the Hon'ble NCLT Chennai the Form 12A for CIRP withdrawal was directed to be considered by a specified set of persons comprising the original COC as at CIRP inception. The said order was confirmed by the Hon'ble NCLAT vide order dated 30.04.2021.

That in accordance with the order dated 22.04.2021 of NCLT confirmed by NCLAT I had conducted the meetings of the specified original COC and based on the approval by such persons the NCLT was by order dated 04.06.2021 pleased to terminate the CIRP and I ceased to operate as Resolution professional from that date.

That I am now made aware that the Hon'ble Apex Court has by order dated 23.07.2021 now stayed the operation of the order of Hon'ble NCLAT dated 30.04.2021 and also further stayed all proceedings taken out in pursuance of the above order.

That as the meeting held to approve the Form 12A of the original petitioner operational creditor and the order dated 04.06.2021 of the Hon'ble NCLT Chennai are all only proceedings taken out in pursuance of the order dated 30.04.2021 of the NCLAT the same are all now not in force and are stayed.

That in consequence to stay of order dated 04.06.2021 under which the CIRP was terminated the CIRP now stands resumed.

In the above circumstances M/s Aruna Hotels Ltd is presently continuing to be under CIRP and I am functioning as the Resolution professional and the Board of Directors stand suspended.

To enable me to discharge my duty as Resolution Professional I demand as under:

1 That the following be handed over to me/designated representatives:

- List of present employees of the company with their roles and responsibilities and copies of their appointment orders and any changes made thereto including their location and contact details (Mobile and E Mail Id)
- List of all Subsisting contracts in respect of the company
- The fixed asset register of the company duly updated till date with location
- All original deeds of title in respect of immovable properties

NEW NO. 29 KAVARAI STREET, WEST MAMBALAM, CHENNAI 600 033.

MOBILE: 99401 11058 Email id: irpnaga@gmail.com

V.NAGARAJAN
INSOLVENCY RESOLUTION PROFESSIONAL

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- All vehicles held in the name of the company
- All Statutory records of the company including Board minutes and Shareholder meeting minutes
- List of all records held by the company duly indexed
- Contract with the Agency providing Security services at the registered office of the company
- Complete back up of the Accounting records of the company
- Day book of all transactions from date of NCLAT order till date whether by way of bank transactions or by journals
- All contracts entered into from NCLAT order date till date by the Company
- Hand over of the current accounting system to enable my team to perform a hard close
- Pending litigations as on date

2. That further I intend to take over possession of the Registered office of the company on 24.07.2021. Needless to say none of the Directors will have any access to the Registered office premises without my specific permission in writing. I shall of course grant necessary access to any of you who may be required to attend the office to enable the smooth transition of the records.

3. I would fix a mutually convenient time for a virtual meeting with such of you who have been in Executive capacity at the Company to give me a briefing to understand what activities are presently underway at the Corporate Debtor so that I can decide how the same are to be handled from now on.

I request your immediate and full compliance of the above as the same are only to comply with the provisions of the Code. It would be my endeavor to complete the CIRP at earliest so that by way of Resolution all stakeholders including the unpaid creditors are paid off.

Kindly note that I am making this preliminary demand only to the limited extent of the immediate requirements that have to be complied without even going into the records of what all has been done post the NCLAT order till date and as such this may be treated as merely the initial requirement on my part and I may need your cooperation into the future as well.

I am advised that the order was passed in the presence of your Advocates and as such I am sure you would have been aware of the order and you would already have made arrangements for handover as mandated under the Code.

I seek you immediate confirmation by 3PM on 24.07.2021

I am sure that as stakeholders you would also be vitally interested in the CIRP being effected successfully and a resolution being achieved. As you would know I have already steered the Resolution of a Hotel company like the CD herein where there was 100% upfront settlement to the financial creditors without any haircut and even the shareholders

NEW NO. 29 KAVARAI STREET, WEST MAMBALAM, CHENNAI 600 033.
MOBILE: 99401 11058 Email id: irpnaga@gmail.com

V.NAGARAJAN
INSOLVENCY RESOLUTION PROFESSIONAL

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had been provided for in the resolution. With support of all stakeholders I am sure we can make the same happen in this case also.

Kindly do the needful and for any further clarifications kindly call me.

I am separately informing the Bank and the Statutory Auditor and also the BSE where the shares are listed. I will also file the necessary forms later tonight at the Registrar of Companies

Needless to say it is necessary that none of you act in respect of any matters of the company as you are now in the status of suspended Directors

Thanking you,
Yours faithfully,
For Aruna Hotels Limited
(Under CIRP)



V. Nagarajan
Resolution Professional

Encl: Hon'ble Supreme Court Order dated 23.07.2021

(True Copy)



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Annexure-A-12

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT CHENNAI**

**IN THE MATTER OF SECTION 60 OF THE INSOLVENCY AND
BANKRUPTCY CODE 2016 (CODE)**

AND

IN THE MATTER OF CETHAR LIMITED

IA OF 2021

IN

I.A. No. 915/IB OF 2020

IN

Petition No: CP/511/(IB)/2017

Mr V Nagarajan Resolution Professional
in respect of M/s Aruna Hotels Limited
with office at New No 29, Kavarai Street
West Mambalam Chennai 600 033
(Near AMR Kalyana Mandapam)

... Applicant

Vs

1. Susai Nadar David
(suspended Managing Director of Aruna Hotels Ltd)
B1 R C PRINCESS ROYAL APPARTMENTS
44-45 SIRUVALLUR HIGH ROAD, PERAMBUR,
CHENNAI, Tamil Nadu 600 011.
2. K N Rajkumar
(suspended Director of Aruna Hotels Ltd)
29A, 3RD STREET THANGAM COLONY
ANNANAGAR WEST
CHENNAI, Tamil Nadu - 600 040
3. R Muralidharan
(suspended Director of Aruna Hotels Ltd)
NO.16/19, ANDAVAR NAGAR, 5TH STREET, KODAMBAKKAM
CHENNAI, Tamil Nadu - 600 024.
4. Freeda G Kanagiah
(suspended Director of Aruna Hotels Ltd)
PLOT NO.5, SALAIMUTHU NAGAR 1ST CROSS STREET,
ARASARADI
MADURAI- 625 016.



5. S Narayanan
(suspended Director of Aruna Hotels Ltd)
NO 9A VALLALAR STREET, VELACHERY
CHENNAI - 600 042.

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6. Bala & Co
Chartered Accountants
"SRI GURU NIVAS",
F2, NO. 21 SRINIVASA NAGAR,
KANDANCHAVADI, OFF: OMR,
CHENNAI 600 096.

7 The Manager
HDFC Bank
Dr Radhakrishnan Salai
Mylapore Chennai 600004

8 The Commissioner of Police
Greater Chennai
Chennai Police Commissionerate
Vepey Chennai 600007

.. Respondents

**APPLICATION UNDER SECTION 60 OF THE CODE READ WITH
RULE 11 OF THE NCLT RULES 2016**

1. Particulars of Applicant / Respondent :

- a. The Applicant is the Resolution professional in respect of M/s Aruna Hotels Limited. The address of service of the Applicant for the purpose of this Application shall be the address of its Advocate Mr R Subramanian at Plot No 179 Lalitha Nagar, Hyderabad 500044.
- b. The Respondents 1 to 5 are the Suspended Directors. The Respondent No 6 is the Statutory Auditor of the Corporate Debtor and the 7th Respondent is a banker to the Corporate Debtor. The 8th Respondent is the Commissioner of Police to whom directions are also sought in the MA 6/2021. The address for service of the Respondents is as set out in the cause title above

J. Narayanan

2. Jurisdiction of the Chennai bench of the Hon'ble Tribunal :

The Applicant states that this Hon'ble Tribunal has exclusive jurisdiction in respect of the reliefs sought herein as the Corporate Debtor in respect of whose affairs the Application is filed and reliefs is sought by orders of the Hon'ble Tribunal under this Application has its registered office in the state of Tamilnadu within the territory over which the Tribunal exercises jurisdiction.

3. Limitation :

a. The Applicant states that the Application is to fix early and emergent hearing of the MA/6/2021 filed for directions to the Respondents to enable the Applicant to proceed with the CIRP of the corporate Debtor which is now back in force in view of the Apex Court order dated 23.07.2021

4. The facts leading to the filing of the present Application are as follows

- a. That this Hon'ble Tribunal was by order dated 17.11.2017 pleased to admit the Company petition of the operational Creditor under Section 9 of the Code and direct the commencement of the Corporate Insolvency Resolution process (CIRP) of the Corporate Debtor Aruna Hotels Ltd
- b. That the Applicant herein was first appointed as Interim Resolution professional and was thereafter appointed as Resolution professional at the 1st COC of the Corporate Debtor
- c. That multiple applications for directions from this Hon'ble Tribunal had to be moved to obtain cooperation of the Suspended Directors to ensure that the CIRP was taken forward



- d. That thereafter on 16.07.2018 the CIRP which had progressed to the level of EOI had to be stopped as the NCLAT set aside the order of NCLT admitting CP 597/IB/2017 and directing that the CIRP be commenced and since that date in view of the order of NCLAT the CIRP came to a halt.
- e. That however by order dated 03.03.2021 the Hon'ble Supreme Court allowed the appeal by the original petitioning operational creditor against the order of NCLAT and has restored the order of NCLT initiating CIRP in respect of the Corporate Debtor
- f. That by such order the CIRP came back in force from 03.03.2021 and the Applicant was to proceed with the CIRP from the stage where the proceedings were as on the date of the NCLAT order
- g. That the Applicant found no cooperation from the Suspended Directors for taking charge of the affairs of the Corporate Debtor and was prevented from resuming the CIRP and hence moved MA/6/2021 for directions as set out therein
- h. That while the said MA/6/2021 was pending the Suspended Directors moved the Apex Court for reliefs related to the CIRP but the same was withdrawn with liberty to invoke Section 12A of the Code for withdrawal of the CIRP
- i. That the Applicant had to reconstitute the COC with Operational Creditors in the interim as all the financial creditors who had earlier filed claims withdrew the same and only operational creditors were left as claimants
- j. That the Hon'ble Tribunal had on 22.04.2021 stayed the functioning of the new COC of operational creditors and directed that Form 12A be placed before the earlier COC
- k. That the said order was challenged in appeal by one of the Suspended Directors at NCLAT and the appeal came to be dismissed by the



NCLAT on 30.04.2021. Though the Appeal was dismissed, in law the order of this Hon'ble Tribunal dated 22.04.2021 had merged with the NCLAT order dated 30.04.2021

- l. That the Applicant had in terms of the order dated 22.04.2021 of this Hon'ble Tribunal confirmed by the order dated 30.04.2021 of the NCLAT conducted the meeting of the old COC member in respect of the Form FA . At such meeting the old COC approved the Form FA of the petitioning operational creditor
- m. That on 04.06.2021 this Hon'ble Tribunal had taken the memo of the Applicant relating to the meeting of the COC conducted as per its order dated 22.04.2021 to consider CIRP withdrawal on record and on such basis permitted the CIRP to be withdrawn and by such order the Corporate Debtor was released from the rigors of the CIRP under the Code and the Applicant was also discharged as Resolution Professional
- n. That on 23.07.2021 the Hon'ble Apex Court permitted an operational creditor who was part of the new operational creditor COC to assail the order dated 30.04.2021 of the NCLAT and was pleased to stay the operation and implementation of the NCLAT order dated 30.04.2021. The Hon'ble Apex Court was also pleased to stay further proceedings taken out in pursuance of the order of NCLAT
- o. That the order dated 04.06.2021 of this Hon'ble Tribunal permitting CIRP withdrawal was only a further proceeding in pursuance of the order dated 22.04.2021 of this Hon'ble Tribunal such order having merged with the NCLAT order dated 30.04.2021. Further order dated 04.06.2021 was passed by the Hon'ble Tribunal based on COC meeting held as per the NCLAT order dated 30.04.2021, the order dated 04.06.2021 of this Hon'ble Tribunal now stands stayed by the order dated 23.07.2021 of the Hon'ble Apex Court. The Copy of the



order dated 23.07.2021 of the Hon'ble Apex Court and the Earlier Court details at the Apex Court website setting out that order dated 30.04.2021 of the NCLAT was the order impugned are annexed as **Annexure I** . The copy of the order of the NCLAT dated 30.04.2021 is annexed as **Annexure II**. As one of the Suspended Directors had also filed an appeal and was present at the hearing there can be no ambiguity on the same

- p. That consequent to the stay of the order dated 04.06.2021 of this Hon'ble Court by which the CIRP was allowed to be withdrawn, the CIRP of the Corporate Debtor continues to be in force as it was on 04.06.2021 and as such the Applicant continues to be in charge of the company as its Resolution Professional
- q. The Resolution professional has duly informed the stake holders including the 6th and 7th Respondents and the Stock Exchange where the shares are listed. Despite intimation to the Respondents 1 to 5 to cooperate with the CIRP they continue to resist allowing the Applicant to take charge of the affairs of the Corporate Debtor
- r. That the Applicant's composite application MA/6/2021 seeking directions to the Suspended Directors to cooperate with the CIRP and to ensure that all properties and records are handed over in toto to the Applicant ncluding full account of all transactions made from date of NCLAT order till date in respect of the Corporate Debtor is required to be taken up emergently and ordered as prayed for. Not only is the CIRP clock ticking also there is grave risk of the Suspended Directors dealing with the assets of the company in this period if the records and assets are not immediately taken over and for this reason the MA/6/2021 is to be heard and decided emergently That as on 16.07.2018 when the CIRP was halted by the NCLAT and after which the CIRP has not been allowed to proceed the CIRP period left

J. Nagaraj

was less than 1 month and even if the intervening period is excluded as it is bound to be there is grave urgency to resume the CIRP and for such purpose the MA/6/2021 is to be heard and ordered urgently

- a. That the Company Petition 597/IB/2017 having been closed in the records of the Hon'ble Tribunal the MA/6/2021 will not be listed except by specific direction of this Hon'ble Tribunal
- b. That given the time bound nature of the processes under the Code it is essential that the order of the Apex Court dated 03.03.2021 and 23.07.2021 are allowed to operate and not remain on paper and the same cannot happen except by issuing directions in MA 6/2021
- a. The Applicant seeks that the Application before the Hon'ble Bench be taken up on 26.07.2021 itself at end of board or on 27.07.2021 itself

5. In view of the facts above said mentioned the Applicant prays for the following reliefs:

- a. The Hon'ble Tribunal may be pleased to :
 - (i) Permit urgent and immediate hearing on 26.07.2021 at end of the board or on 27.07.2021 the MA/6/2021 of the Applicant
 - (ii) For such other and further reliefs as the nature and circumstances of the case may require.

6. The Applicant has paid the applicable fee electronically



Applicant



Advocate

Dated this the 24th Day
of July 2021 at Chennai

(True copy)





Balaji Srinivasan <balaji@24lc.in>

I.A. C.A.NO. 2901 OF 2021 D RAMJEE vs KN RAJAKUMAR & ORS. & Vakalatnama

1 message

Balaji Srinivasan <balaji@24lc.in>
To: aor@g10.in

Mon, Jul 26, 2021 at 3:25 PM

3 attachments

 **I.A. C.A.NO. 2901 OF 2021 D RAMJEE vs KN RAJAKUMAR & ORS..pdf**
5319K

 **Vakalatnama D Ramjee.pdf**
150K

 **Vakalatnama D Ramjee.pdf**
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