

N. SUBRAMANIAN

A

v.

M/S ARUNA HOTELS LTD. & ANR.

(Civil Appeal No. 187 of 2019)

MARCH 03, 2021

B

**[ROHINTON FALI NARIMAN, B. R. GAVAI AND
HRISHIKESH ROY, JJ.]**

Insolvency and Bankruptcy Code, 2016 – s.9 – Arrears of salary – claim of – Appellant filed an application u/s.9 of the 2016 Code and 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 respondent-company – National Company Law Tribunal (NCLT) 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 was made out for admission – National Company Law Appellate Tribunal (NCLAT) set aside the NCLT order and referred to a letter by the Employees Provident Fund Organisation dated 13.04.2016 and stated that the Appellant's claim was settled as a result of that letter – Before the Supreme Court, respondent-company contended that claim of the appellant is time barred – On appeal, held: 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 – 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 – This being the case, the NCLT judgment is correct in admitting the s. 9 application by the Appellant – Consequently, the NCLT judgment is restored to the file – The impugned NCLAT judgment is accordingly set aside.

C

D

E

F

G

H

- A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 187 of 2019

From the Judgment and Order dated 16.07.2018 of the National Company Law Appellate Tribunal, in CA (AT) (Insolvency) No. 290 of 2017.

- B With

Civil Appeal Diary Nos. 34841, 34836, 34839 of 2018

Ritin Rai, Mohan Parasaran, Sr. Advs., S. Santanam Swaminadhan, Kartik Malhotra, Ms. Abhilasha Shrawat, Mrs. Aarthi Rajan, A. Karthik,

- C Ms. Aditi Dani, Ashwin Kumar D.S., Vishnu Kumar, Surbhi Mehta, Advs. for the appearing parties.

The Judgment of the Court was delivered by

R. F. NARIMAN, J.

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

- E 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

- F [“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

- G 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

- H 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.

A

B

C

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,

D

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.”

E

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”.

F

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

G

H

- A 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
- B raising claim of arrears of salary for the period 1998 to 2016 has not been explained.
- ***
- C 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.”
- D 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.
- E 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 F 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 G 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.
- H 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.

A

B

C

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.

D

E

F

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**

G

12. Permission to file the Civil Appeals are rejected.