

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 19.04.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/754/2023 in CP(IB) No.248/7/HDB/2017
NAME OF THE COMPANY	Golden Jubilee Hotels Private Limited
NAME OF THE PETITIONER(S)	Bank of Baroda
NAME OF THE RESPONDENT(S)	Golden Jubilee Hotels Private Limited
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/754/2023

Orders pronounced, recorded vide separate sheets. In the result, the application is dismissed.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH II**

**IA No.754 of 2023 in
CP(IB) No.248/7/HDB/2017**

*Regulation 39(9) of IBBI (Resolution Process for Corporate
Persons) Regulations, 2016 read with Section 60(5) of Insolvency
& Bankruptcy Code 2016 and read with Rule 11 of NCLT Rules, 2016*

In the matter of M/s.Golden Jubilee Hotels Private Limited:

Mr. Kunal Sharma,
Flat No.904, Tower IA,
NCC Urban Gardenia,
HITEC City Main Road,
Madhapur, Hyderabad – 500 081.

....Applicant

A N D

Mr.Subodh Kumar Agrawal,
Resolution Professional of
M/s.Golden Jubilee Hotels Private Limited,
Survey No.64, Besides Shilpakalavedika,
Shilparaman, Madhapur.
Hyderabad – 500 089.

....Respondent

Date of Order: 19.04.2024

Coram:

Shri. Rajeev Bhardwaj, Hon'ble Member (Judicial)
Shri.Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant	:	Dr.Srinivas Kondapally, Counsel
For the Respondent	:	Mr.Y.Suryanarayana, Mr.N.N.Sarma, Mr.Sachin Sharma, Counsels

Per : Sri Rajeev Bhardwaj, Hon'ble Member(Judicial)

ORDER

1. For the non-payment of the salary, Sri Kunal Sharma (**hereinafter referred as the Applicant**), who claims himself as the “**Owner’s Representative**”, filed the present Application under Regulation 39(9) of IBBI (Resolution Process for Corporate Persons) Regulations, 2016 read with Section 60(5) of Insolvency & Bankruptcy Code, 2016 and Rule 11 of NCLT Rules, 2016 seeking directions to his Employer, M/s.Golden Jubilee Hotels Private Limited (**hereinafter referred as the Corporate Debtor/CD**) for the release of his pending remuneration amounting to Rs.30,07,150/- w.e.f., February, 2020.

2. **Case of the Applicant:**

- a) The Applicant was appointed as “**Owner’s Representative**” on 01.04.2015 and in recognition of his services, he was awarded higher remuneration by the Chief Executive Officer of the CD vide letter dated 31.10.2019.
- b) During his employment, the CIRP was initiated against the CD vide letter dated 27.02.2018 and the Committee of Creditors (CoC) approved the Resolution Plan submitted by M/s.BREP Asia II Indian Holding CO II (NQ) Private Limited on 21.12.2018. The Resolution Plan was approved by this Authority vide order dated 07.02.2020 in IA No.32 of 2019.
- c) After the approval of the Resolution Plan, the CD stopped the payment of the remuneration to the Applicant without assigning any reason.

d) Prior to 31.03.2020, the payment of remuneration was being paid through bank. Even in the Annual Tax Returns also, the CD is being mentioned as the employer of the Applicant. The CD has also included the name of the Applicant as one of the employees' in the Insurance Policy taken for the entire group of 352 employees.

3. **Case of the Respondent:**

- a) It is submitted that the Applicant is the son of the Chief Executive Officer and Ex-Promoter of the CD, Sri L.N.Sharma and the present Application has been filed with malafide intentions. The alleged appointment letter was issued by Sri L.N.Sharma to give undue benefits to the Applicant.
- b) As per the record of the CD, no dues are pending for payment to the Applicant. The Applicant also had at no point of time come to the office of the CD to perform his so called functions/duties. If the Applicant was aggrieved, he should have approached the Members of the Steering Committee.
- c) In the Resolution Plan, it is provided that there would be no remuneration/compensation payable or to be paid to the related parties and which was communicated to the Ex-Promoters/Ex-Management. Therefore, on this count also the Applicant is not entitled for any such benefit.
- d) Sri L.N.Sharma, erstwhile Chief Executive Officer of the CD has also approached the Hon'ble NCLAT regarding the approval of the Resolution Plan, which is pending for adjudication.
- e) The CD was admitted into CIRP vide order dated 27.02.2018 and Sri Subodh Kumar Agarwal was appointed as Interim Resolution

Date of Order: 19 .04.2024

Professional, who was later confirmed as Resolution Professional vide order dated 04.04.2019. The Resolution Plan was approved by the CoC on 21.12.2019 and by this Authority vide order dated 07.02.2020 in IA No.32 of 2019.

4. We have heard the Learned Counsels for both the parties and have gone through the entire records.
5. The Applicant was appointed as the Legal Officer vide order dated 01.04.2015 and his salary for the month of April, 2015 was fixed at Rs.50,000/-. The salary was between Rs.50,000/- to 60,000/- during the period from 01.04.2015 to 30.09.2019.
6. However, in the letter dated 31.10.2019 addressed by Sri L.N.Sharma, Chief Executive Officer of M/s.Golden Jubilee Hotels Private Limited, the Applicant is addressed as **“Owner’s Representative”** and his salary was refixed, w.e.f., 01.04.2019 for the outstanding work. The relevant portion of the letter is reproduced below:

“I am pleased to inform you that you have performed well during the period of employment and have been rewarded to motivate you further to work in the Company with renewed vigour, dedication and commitment.

A detailed compensation sheet has been provided along with this letter listing out your enhanced compensation package.

I look forward to your continued good performance and successful career in the Company”

Date of Order: 19 .04.2024

7. The Applicant has also been recorded as the employee of the CD in the Insurance Policy purchased for the period from 01.02.2020 to 31.03.2021 by the CD for all the employees and his name figures at serial No.326.
8. Keeping in view the aforesaid background, it is relevant to note that the initial appointment of the Applicant was as a Legal Officer vide letter dated 01.04.2015. The period for which the arrears of remuneration is claimed pertains to the CIRP period and most importantly, the letter dated 31.10.2019 vide which the Applicant is shown as **“Owner’s Representative”** is signed by his father Sri L.N. Sharma as Chief Executive Officer. In the said letter, the father has not only appreciated the work of his son by recording “that he has performed excellently during the period of his employment”, but he was also given revised pay scale. Sri L.N.Sharma has congratulated the Applicant’s for the outstanding work done by him, but there is nothing on record to reflect this. If there had been any such outstanding work, the CD would not have been in CIRP.
9. The father of the Applicant has given such appointment without any authority. After the CIRP, IRP/RP takes control of entire operations and business of the CD. Powers of the existing board of directors stand suspended and vests in IRP/RP. The role of an IRP, RP, or Liquidator is often compared with that of a Chief Executive Officer (CEO) of a company. Thus, the IRP/RP/Liquidator steps into the shoes of the Director/CEO of the company. However, it is important to note that the powers of the IRP/RP/Liquidator in such capacity is not unfettered, but it is subject to the authority of the Committee of Creditors/the Stakeholder’s Committee, as the case may be. An IRP/RP is required to take several

decisions related to a wide range of stakeholders such as bankers, promoters, employees, suppliers, customers, contractors, taxpayers, entrepreneurs, evaluators, among others.

10. Seen in the context of the powers of the RP, the father of the Applicant was in no way competent to give such appointment or enhancement of salary to his son. All the actions relating to the affairs of the CD are subject to the approval of the Resolution Professional. The Applicant's appointment as "**Owner's Representative**" and enhancement of salary has not been approved by the Competent Authority.
11. The Respondent in his reply has given vague and evasive explanation about the appointment and subsequent change in the designation and hike in the pay of the Applicant. There is also no explanation as to how his name appeared in the Insurance Policy and particularly, when there is also specific reference in the Resolution Plan that no remuneration would be paid to the related parties.
12. The act and conduct of the Resolution Professional gives the impression that he is also supporting the Applicant, if not directly but indirectly in covering up the matter. It is not explained as to how the Applicant was appointed as "**Owner's Representative**" and given salary hike without the approval of the Resolution Professional.
13. There is no doubt about the connivance of the Applicant's father as is recorded as holding the position of the Chief Executive Officer but the Resolution Professional was supposed to be in control of the CD and any decision relating to the affairs of the CD is subject to his approval. It

Date of Order: 19 .04.2024

shows as how meticulously Sri L.N.Sharma is interfering in the affairs of the CD by appointing his son as “**Owner’s Representative**” and at the same time challenging the approval of the Resolution Plan before the Hon’ble NCLAT.

14. Seeing the murky affairs going on in the CD, we consider it appropriate to record that the Resolution Professional is supposed to put the things in order and at the same time consider this Application as being without any merit as the Applicant was appointed as “**Owner’s Representative**” by his father without any authority during CIRP. Moreover, being the “**Owner’s Representative**”, his remuneration should be paid by the “**Owner**” and not by the CD. There is also no record to prove that the Applicant has discharged his duties for the period of non-payment of dues.
15. For the reasons as discussed above, we opine that the Application has no merit and accordingly **IA No.754 of 2023 in CP(IB) No.248/7/HDB/2017 is dismissed.**

SD/-
SANJAY PURI
MEMBER (TECHNICAL)

Vinod

SD/-
RAJEEV BHARDWAJ
MEMBER (JUDICIAL)