

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302
CP(IB)/108(AHM)2023

Order under Section 9 IBC

IN THE MATTER OF:

Lords Inn Hotels And Developers Private Limited
V/s
Aaryaraj Club And Resorts LLP

.....Applicant

.....Respondent

Order delivered on: 12/07/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)**

CP(IB) No. 108 / NCLT / AHM / 2023

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

IN THE MATTER OF:

Lords Inn Hotels And DevelopersApplicant
Private Limited

Versus

Aaryaraj Club And Resorts LLP ...Respondent

Order pronounced on 12.07.2024

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Lords Inn Hotels and Developers Pvt Ltd

202, 2nd Floor, Morya Blue Moon Opp.
City Mall, Off New Link Road Andheri West,
Mumbai-400053

...Applicant/Operational Creditor

Versus

Aaryaraj Club and Resorts LLP

Lunettes Industries, 2-Radha Krushnagar,
Lathia Motors, Gondal Road,
Rajkot, Gujarat - 360004

... Respondent/Corporate Debtor

Present:

For the Applicant : Mr. Navin Pahwa, Sr. Adv. a.w Mr. Bhishma
Raval, Adv. Mr. Aman Kacheria, Adv. Ms.
Sakshi Dube, Adv. & Grishma Mahatme, Adv.

For the Respondent : Ms. Megha Jani, Adv. a.w Ms. Anjasi Shah,
Adv. & Chanakya Bhavsar, Adv.

JUDGEMENT

1. This application is filed by M/s Lords Inn Hotels & Developers Ltd (Operational Creditor) (CIN No.755204MH2007PTC166980 situated at 202, 2 floor, Morya Blue Moon Opp Citi Mall, Off New Link Road, Andheri W Mumbao 400053, who entered into a franchisee and management agreement dated 17 July 2019 with the respondent corporate debtor M/s Aarya Raj Club and Resorts LLP (LLPIN-AAE2793) situated at 100/P-1, Kalawad Road, Chapra Village, Rajkot Gujarat 361162, whereby the Operational Creditor was appointed as operator to manage and supervise the operation of the club/resort. Independent of the same the corporate debtor also entered in to a marketing arrangement with M/s IBFW Hospitality to control, conduct and promote sales and marketing activities of banquet and membership sales of the club.
2. As per the Club & Hotel Franchisee & Management agreement the operator (applicant) the property ownership and the responsibilities to be discharged by the operational creditor are specified including the intention of appointment to manage and supervise the operation and management of the property of

corporate debtor and the operational services to be provided which are consultancy advisory and operational services to the owner. The period specified in the contract is from the beginning to 10 years, renewable by mutual consent.

3. There is also a submission of an exhibit (C) of a tripartite agreement between the two parties and IBFW Retail Pvt Ltd whereby the applicant would be paying the marketing fee to IBFW as per the Lords agreement with IBFW and further authorise the IBFW jointly to carry out promotional activities. There are two agreements one for providing the operation facility by the corporate debtor and the applicant and corporate debtor coming together for sale and marketing arrangement with another third party. Dispute resolution in this contract is stated to be in Ahmedabad under Arbitration and Conciliation Act 1996. The services provided are micro contracts on which there are certain invoices produced as exhibits towards supply of newspapers etc., in page 61-175 which are raised by others on all the 3 parties mentioned (3rd party).
4. The applicant has also enclosed a MoU dated 4th May 2019 wherein there seems to be certain investments made by the

Operational creditor as a partner in the business of the corporate debtor. The applicant has also enclosed copies of certain proforma invoices raised between August 2021 to January 2023 and copies of statement of revenue received through membership and banquet sales.

5. The applicant issued a demand notice on 24th Feb 2023 for the unpaid operational debt due from the respondent for a total amount of Rs.1,97,26,581/-. The demand notice specifies in Para 10 that there was a due of Rs.1,01,48,000/- as the principal amount towards management base fee as per agreement and interest of Rs.56,44,992/- calculated at 18% and Rs.34,11,138/- as principal amounts revenue received through sale of banquet and membership out of the applicant's club along with interest amount of Rs.5,22,452/-. The due dates are providing in Annex C of the application stated to be between 10.10.2021 to 10.02.2023. From the MoU it is observed also that there is also an indemnity clause on the dues payable by the partners and the existing loans. Both the MoU and the Franchise Agreement mention of dispute to be raised before the

Arbitration in Ahmedabad under the Arbitration & Conciliation Act, 1996.

6. The respondent sent a reply to the demand notice on 1 April 2023 and further issued a detailed legal reply to the notices on 08.04.2023 denying and disputing all the statements and claims stated in notice of applicant dated 24.02.2023. While detailing and reminding all the duties and responsibilities to be performed by the operational creditor, the letter disputes the services provided as per agreement, which has resulted in huge losses due to deployment of inefficient staff at the corporate debtor's resort amounting to Rs.34.90 lakhs due to negligence, fudging of accounts, embezzlement of monies, cash considerations done without accounting resulting in loss of Rs.25 lakh etc., illegal activities and offering huge discount to certain clients thereby affecting the name and reputation of the corporate debtor. Further, there has been mention in the letter of loss of revenues to be collected amounting to RS.42.53 lakhs, fraudulently not transferred funds received from online bookings like Make My Trip & Goibibo amounting to Rs.25.34 lakhs. The legal notice gave further directions for removal of the

log of the respondent from the website and also claimed a damage of Rs. 8 crores from the applicant. It also suggested nominating Honble Mr Rashmin Manharbhai Chhaya, retd Chief Justice of Gauhati High court as Arbitrator if consented to resolve the dispute.

7. The applicant filed its final written submission on 12 May 2024 after we heard the matter. Apart from mentioning the same facts in the application, it stated that the corporate debtor had not replied to the original demand notice issued by him on breach of contract of terms in the F & M Agreement. Also certain judgments in this regard were enclosed wherein the judgment of Hon' ble NCLAT in case of Deepak Modi V Shalfeyo Industries Pvt Ltd & Ors was pleased to hold that having consumed the services and goods, a belated purported dispute on quality is nothing more than a moonshine defense. The MoU was still valid and subsisting as the corporate debtor has failed to terminate the F & M Agreement and has also accepted the claim is a debt and/or liability on behalf of the corporate debtor. Further on the contention that the agreement was not with Lords Inn Hotels & Developers Limited as the agreement was

signed with Lords Sai Maa Hotels Pvt Ltd, the applicant stated that being a large service provider spread across the country, in order to manage its business the Operational Creditor had executed several arrangements with various hotels and in this case Lords Sai Maa Hotels was given the assignment and they are one and the same part and parcel of the Operational Creditor. The earlier bills were paid to the same entity.

8. The respondent made a point wise (claim wise) reply in detail.
 - a) The invoices raised under the MoU do not fall under the character of Operational Debt under Sec 5(21) of the IBC 2016 as observed in the judgments enclosed. relevant judgments are: (i) Mehta Real Assets Bangalore P Limited (CP)(IB) No. 165/BB/2022 dated 31.1.2024 passed by the Hon'ble Hon' ble NCLT Bangalore; and ii) Trafigura India Pvt Ltd vs TDT Copper Limited, in company appeal Insolvency No.742 of 2020 dated 15.09.2022 passed by Hon'ble NCLAT ND.
 - b) Further No GST has been paid enclosed along with the invoices which are due and payable under F & M Agreement.

- c) Applicant is not entitled to claim interest on the debt in absence of any specific provision in the agreement,
 - d) The claim made under the Marketing Agreement dated 10.6.2019 is not maintainable as it is signed by Lords Inn who is not the Operational Creditor;
 - e) The application and demand notice provided are defective;
 - f) The applicant refused to come for arbitration as suggested. Further it submitted that Arbitration Petition No.135 of 2023 under Sec 11 of the Arbitration & Conciliation Act, 1906 is also pending before the Hon'ble Gujarat High Court for the appointment of an Arbitrator. Notice was issued to the applicant but he has chosen not to appear in the matter.
9. Heard both the parties and their submissions in the matter. The observations are as follows:
- i) The Franchise Agreement and MoU between the parties which includes a third party for marketing the services provided clearly raises a doubt whether the dues claimed without proper GST payment to be a valid invoice to be treated as an Operational Debt. Even though the GST has been claimed in proforma invoices, which are lump sum

base fees, no proof of GST payment has been made and furnished.

- ii) Even though a membership fee is shown as due the MoU allows the applicant to collect membership fees and use the funds as per its own decision and pay the marketing fee to IBFW (third party) as per the terms of the MoU Agreement.
- iii) It further appears from the Franchise agreement and MoU that the dispute if any will be raised before the Arbitrator as per the Arbitration and Conciliation Act, 1906. The applicant had not agreed for arbitration even after a detailed legal notice was issued wherein various allegations and a huge claim has been made of Rs 8 crores.
- iv) Such service agreements are guarded for any violations, disputes only through an Arbitration & Conciliation Process.
- v) Further from the MoU dated 4 May 2019 between the corporate debtor and Lords Sai Maa Hotels Pvt Ltd (who is of the same group/sub contracted the work) it also appears there was an intention to invest (Rs.24 crores in

phased manner) in the corporate debtor, full details of which were not provided. However, the MoU allows the parties to carry on the business of managing and operating the corporate debtor.

- vi) The invoices raised and disputes between the parties are subsequent to this MoU. It is also observed that the invoices exhibited to this application are mere proforma invoices which are unsigned and not tax invoices.
- vii) It appears to be there are serious disputes as the property of the respondent was handed over to the applicant to perform the entire business operations. Such disputes are serious and does not assure a delivery of goods in proper shape to be considered to be due and payable, and the applicant has not replied to such dispute even if they are allegations but submitted with facts and photos, which are not replied with facts.
- viii) The application does not comply with the requirements to be filed under Sec 9 of IBC 2016 as it is observed that the applicant also has become a partner through its holding entity with the respondent, the full facts have not been

presented except for the agreement signed between both the parties.

10. In view of the above observations on submissions, we pass the following order:

ORDER

The CP(IB) No.108 of 2023 is rejected.

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**DR.V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

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**CHITRA HANKARE
MEMBER (JUDICIAL)**