

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302
C.P. (IB)/298/AHM/2023

Order under Section 9 IBC

IN THE MATTER OF:

CBRE SOUTH ASIA PRIVATE LIMITED
Vs
MASCOT SOUTH ASIA LLP

.....Applicant

.....Respondent

Order delivered on: 25/07/2024

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. 298 of 2023

(Filed under Section 9 of the Insolvency & Bankruptcy Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

CBRE SOUTH ASIA PVT. LTD.,

A Company registered under Companies Act, 1956
Regd Office: PTI Building, Ground Floor, 4, Parliament Street
Connaught Place,
New Delhi-110001

....Operational Creditor

V/s

Mascot South Asia LLP

B 23, Mascot Industrial
Park, Jadavpura, Kadi
Namehsana, Mahesana,
Gujarat-382715

... Corporate Debtor

Order pronounced on 25.07.2024

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)
MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Bhash Mankad, Adv.

For the Respondent : None

JUDGEMENT

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC, 2016) against the Corporate Debtor viz. MASCOT SOUTH ASIA LLP seeking thereof to initiate Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) as against the Corporate Debtor.
2. In part II of the application, it is stated that the Corporate Debtor, LLP (AAY-8305) situated at B 2 3, Mascot Industrial Park, Jadavpura, Kadi Namesana Mahesana, Gujarat was incorporated on 30.09.2011 with the Authorised Share Capital and PaidUp Share Capital of N/A. In Part IV of the application, default amount of Rs.1,29,80,000/- (One Crore Twenty-Nine Lakhs Thousand Eighty Thousand Only) is stated to have become due as on 20 Sept 2023.
3. It is stated that the Operational Creditor was engaged by a sister concern of the CD (respondent) vide an agreement

dated 1.5.2022 to provide exclusive Corporate real Estate Services in acquiring industrial land at village Manpura, Taluka Mandal, Gujarat and an agreement was signed on 1.5.2022. The applicant performed all its obligations inter alia conducting site visits, etc., and ensured that the transaction was executed smoothly and a sale deed dated 27 April 2023 was signed between M/s Honda Cars India Limited and Mascot South Asia LLP(respondent). As authorised by the respondent, the applicant to raise invoices vide emails dated 12 May 2023 and 15 May 2023, based on which invoices to the tune of Rs.1,29,80,000 dated 16 May 2023 were raised to be cleared within 30 days of receipt of invoice and any default after the due dates would be subject to interest @2% per month till realisation. The applicant stating to be the operational creditor further states that he facilitated the purchase of said property from an entity called Honda Cars Limited and deed of conveyance was executed between HCIL and Mascot South Asia (respondent) a group/sister company of MIGL. Also enclosed to the application is a sale deed dated 27 4 2023. On non-payment of invoices, demand notice was issued on 20 Sept 2023 which

was not responded or paid and the debt became due from 16 May 2023. The applicant claims an amount of Rs 1,29,80,000 plus interest @2% per month till date of this application, further till realisation. The applicant further gives another conflicting date of default which is mentioned as 16 June 2023. The applicant has further enclosed the NeSL certificate.

4. There has been no reply from the respondent nor has he appeared before us. The applicant has not made the sister concern MIGL as a party to this application with whom such an agreement is stated to have signed.
5. Our observations are as follows:
 - a) The agreement dated 1 May 2022 is between the Mascot Infrastructure (Gujarat) LLP sister concern of CD (respondent) who is a Limited Liability Partner (whose capital is stated as NIL in the application) and the applicant. The applicant has been engaged as a consultant defined in Clause 10 of the agreement to complete certain acquisition of industrial land in village Manpura. The relationship between both the parties is that of Consultant and Client and a fee based revenue is

stipulated to be raised by way of an invoice and the agreement is stated to be valid for a period of 12 months to be extended by mutual consent and that could be terminated by either party by giving 30 days written notice. The agreement also stipulated that no partner, director, or affiliate of either party shall have any personal liability in connection with this agreement. It is also stated that the agreement shall be governed by Indian law and the courts at New Delhi shall have exclusive jurisdiction over the subject matter of this agreement.

- b) A separate deed of conveyance has been signed between another party which is Honda Cars India Pvt Ltd and M/s Mascot South Asia LLP (respondent CD) for which certain consideration has been paid and registered. Neither the applicant nor the respondent CD's sister concern which has signed the original agreement is a party to this conveyance deed and a part or parcel of land has been transferred to the CD.
- c) An email dated 15 May 2023 has directed the applicant to raise the invoices in the name of the CD the deed is concluded (sale agreement).

- d) The applicant has raised an invoice on the CD on 16 May 2023 for an amount of Rs.1,29,80,000 as transaction advisory fees towards acquisition of 381 acres Industrial NA land located at Manpura, Gujarat with due date of 30 days. Certain emails have been sent for payment, particularly dated 31/8/2023 before filing this application. The applicant issued a Demand Notice dated 20 Sept 2023.
- e) Both the respondent CD and its sister concerns are Limited Liability Partnership entities, and there is no proof of any board resolution supporting any such sub-contracting of the work (initial contract in the name of the Sister Concern MIGL) has been furnished. It is also observed that the partners are the same in both the companies.
- f) Further the dispute resolution, is stated to be as per Indian Law and the jurisdiction is at New Delhi. Further, the applicant has not given any proof of the share capital of both the entities or its balance sheet to further its position as to whether it can initiate insolvency, especially when the original agreement dated 1 May 2022 states that no other party including affiliates can discharge the liability

under this agreement. If at all any course of recovery, it is not provided under IBC to admit this application.

6. In view of the above submissions, we pass the following order:

ORDER

CP(IB) 298 of 2023 is rejected.

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

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CHITRA HANKARE
MEMBER (JUDICIAL)