



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

COURT - II

CP (IB) 24/NCLT/AHM/2020

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

**Trinity Entertainment & Strategic
Consultants LLP**

**Applicant/
Operational Creditor**

Versus

Padmanabh Sports Private Limited & Anr.

**Respondent/
Corporate Debtor**

Order Pronounced on: 02/11/2022

Coram:

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



ORDER

1. This application is filed on 11.12.2019 under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') through Mr. Vismay Chokshi, designated partner of **Trinity Entertainment & Strategic Consultants LLP** (for brevity 'Applicant') authorised vide resolution dated 01.11.2019, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against **Padmanabh Sports Private Limited** (for brevity 'Corporate Debtor').

2. The Applicant is a limited liability partnership having identification No. 27AANFT3932D1Z3 and having registered office at C-802, Silver Dunes, Tata Press Lane, Prabhadevi, Mumbai 400 025. The applicant is engaged in the business of providing franchise management and such other services.

3. The corporate debtor is a private limited company, incorporated under the provisions of Companies Act, 2013 on 23.12.2016 duly registered with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U74110GJ2016PTC094837, having registered office at
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401, Abhishree Avenue, Opp. Hanuman Temple, Nehru Nagar Circle, Ambawadi, Ahmedabad 380 015, Gujarat State. The authorised share capital of the corporate debtor is Rs. 1,00,000/- and paid up share capital is Rs. 1,00,000/-. The corporate debtor is engaged in the services and business of event managements.

4. It is submitted that the applicant (formerly known as Trinity Entertainment) had entered into a Franchise Management Agreement (Agreement) with the corporate debtor dated 28.07.2017 for a period of three years and post completion of 12 months period there will be a review to decide for the following 12 months wherein the applicant had agreed to provide management services in relation to the Premier Badminton League for managing the team of the corporate debtor i.e. Ahmedabad Smash Masters. Subsequently, both parties executed an amendment agreement dated 04.10.2018 whereby the term of the agreement was extended for one year from 01.10.2018 till 30.09.2019. All the terms and conditions of the Franchise Management Agreement dated 28.07.2017 were made applicable *mutatis mutandis* to the Amendment Franchise Management Agreement dated 04.10.2018.



5. It is submitted by the applicant that invoices were raised as per the agreement after rendering services to corporate debtor which were duly received and acknowledged by the corporate debtor, without any demur or protest, but, the corporate debtor failed to make complete payment. That the applicant had received two cheques totalling to Rs. 10,08,197/- on F.Y. 2019-20. A sum of Rs. 17,79,718.82 is still outstanding and payable by the corporate debtor as per ledger account of the applicant and as per the computation annexed with the application.
6. It is further submitted by the applicant that on not receiving the balance outstanding despite sending numerous reminders through e-mail, the applicant was constrained to issue demand notice dated 13.09.2019 under Section 8 of the Insolvency & Bankruptcy Code, 2016 which was duly served on the corporate debtor. The corporate debtor replied to the demand notice vide letter dated 20.09.2019 inter alia admitting the debt. Reproduce para of admitting debt hereunder:

“7. Without prejudice to the above, our client further states that as per the meeting conducted on 21.06.2019 and pursuant to that an –email dated July 08, 2019 you have



clearly stated that the amount due is Rs. 14,69,055/- It is thus, clearly submitted that the dues remaining are only as per the e-mail dated July 08, 2019”

7. Thereafter, the instant application was filed by the applicant under Section 9 of the Insolvency and Bankruptcy Code, 2016, along with an affidavit under Section 9 (3) (b) and a certificate from the Bank showing that no payment is received by the applicant as per Section 9 (3) (c) of IBC.

8. The corporate debtor filed affidavit in reply stating that:
 - Mr. Vismay Chokshi has no authority to file the application;
 - The application and the affidavit in support thereof are vexatious and contrary to law;
 - The applicant has suppressed material facts;
 - The demand notice issued is not as per Rule 5 of the IB Code, 2016 and, therefore, the same is not maintainable;
 - The amounts claimed by the applicant are not due and payable;
 - The petitioner has not performed the scope of the work as described and mentioned in the agreement.



9. The applicant filed rebuttal documents whereby submitted certified copy of the resolution passed by the designated partners of the applicant company in its meeting held on 13.08.2020 authorising Mr. Fahad Chowdhary, authorised partner to appoint advocate to conduct all legal proceedings on behalf of the applicant, and also denied the contents of affidavit in reply.

10. The applicant filed written submissions stating that as per the Franchise Management Agreement, the applicant is entitled to remuneration of Rs. 3.5 lacs per month for providing management services. Pursuant to the agreement, the applicant had raised invoices dated 04.12.2018, 02.01.2019, 23.01.2019, 27.03.2019 and 27.03.2019 on the corporate debtor, but the corporate debtor failed to make complete payment. The corporate debtor acknowledged the debt and default by e-mail dated 08.07.2019. The corporate debtor also acknowledged the debt in its reply to the demand notice dated 20.09.2019 wherein the corporate debtor had inter alia stated that the amount payable is Rs. 14,69,055/-. No dispute has ever been raised by the corporate debtor.



11. The corporate debtor filed written submissions stating that not a single document is produced by the applicant to prove that Trinity Entertainment and Trinity Entertainment & Strategic Consultants LLP is the same entity. Affidavit of no dispute as per Section 9 (3) (b) is not filed inspite of objection filed by the respondent. That, none of the invoices bear any stamp or signature of the representative of the respondent. That, the applicant has not placed on record sufficient material to prove the amount is due from the respondent.
12. As per part IV, Form 5 total amount of debt is Rs. 17,79,718/- (Rupees seventeen lacs seventy-nine thousand seven hundred eighteen only) and date of default is 01.09.2017. The present application is filed on 11.12.2019, which is within limitation and not barred by law.
13. Registered office of the corporate debtor is situated in Ahmedabad, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.



14. Heard submissions and perused the documents on record. The first objection raised by the corporate debtor is that Mr. Vismay Chokshi has no authority to file the application. On perusal of the record it is found that the applicant has filed copy of resolution passed by the designated partners of the applicant LLP on 01.11.2019 authorising Mr. Vismay Chokshi , designated partner of the LLP, to act on behalf of the applicant before Court/Tribunal/Forums in legal matters including NCLT to commence CIRP against the corporate debtor. On perusal of the record it is found that in paragraph 7 of its reply dated 20.09.2019 to the notice under section 8 of the Code sent by applicant, the corporate debtor has admitted operational debt of Rs. 14,69,055/-. Relevant portion of the reply is reproduced hereunder:

“7. Without prejudice to the above, our client further states that as per the meeting conducted on 21.06.2019 and pursuant to that an –email dated July 08, 2019 you have clearly stated that the amount due is Rs. 14,69,055/- It is thus, clearly submitted that the dues remaining are only as per the e-mail dated July 08, 2019”

15. As regards the difference in amount shown in Form 5 and in the email acknowledgement, we are supported by the judgement in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ (JP) 2 SC*** wherein Hon’ble Supreme Court



held that the scheme under Sections 8 and 9 of the I & B Code the Adjudicating Authority when examining an application under Section 9 would have to determine as under:

- (i) Whether there is an “operational debt” as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?

and

- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

Other contentions raised in defence by the corporate debtor like maintainability of the application, suppressing material facts by the applicant and non-performance of the scope of the work as described in the agreement are not supported by any document and appears as moonshine defence. No such objection or dispute was raised before the issue of notice under Section 8 of IBC, 2016.



16. In light of the above discussions, it is evident that the debt is due and payable and default has occurred. The present application is admitted, in terms of section 9 (5) (i) of IBC, 2016.
17. The applicant has not proposed the name of the Interim Resolution Professional (IRP). Therefore, we hereby appoint Mr. Neeraj Kumar Bajaj having address at 609, 21st Century Building, Ring Road, Surat with registration No. IBBI/IPA-001/IP-P-02672/2022-23/14110 and having email ID nkbajajca@gmail.com subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to be filed within a period of one week from the date of this order.
18. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Neeraj Kumar Bajaj to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment



by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.
20. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. A copy of order along with complete copy of application be served to IRP by the applicant within 7 days of order. In addition, a copy of the order shall also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal and shall forward the compliance report to the Registrar, NCLT.

S/d-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

S/d-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Nair/Rahul LRA

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