A-5

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

C.P.(I.B) No. 188/NCLT/AHM/2020

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.02.2021

Name of the Company: Innovating Hospitality a Partnership Firm
Through its Partner VImal Dhar
V/s
Oravel Stays Pvt. Ltd.

Section 9 of the Insolvency and Bankruptcy Code, 2016,

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(through video conferencing)

None appeared on behalf of the parties.

The order is pronounced in the open court vide separate sheet.

Chockalingam (signature)

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 18th day of February, 2021

(signature)

MANORAMA KUMARI
MEMBER JUDICIAL

BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CP (IB) No.188/9/NCLT/AHM/2020

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

M/s Innovating Hospitality
(A Partnership Firm)

Registered Office At:
Gokul Grande Govardhan Villas,
Near Techno Motors Devali,
Udaipur-313001 (Rajasthan)

..... Petitioner
(Operational Creditor)

Versus

M/s Oravel Stays Pvt. Ltd.

Registered Office At:
Ground Floor-001, Mauryansh
Elanza, Shyamal Cross Road,
Nr. Parekh Hospital, Satellite
Ahmedabad
Ahmedabad-380015 (Gujarat)

..... Respondent
(Corporate Debtor)

Order delivered on 18.02.2021.

Coram:
Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:
Mr. Saurabh Jain, advocate, ... for the Petitioner.
Mr. Kunal Vyas, advocate, ... for the Respondent.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member (T)]

1. The present Application is filed under Section 9 read with Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Code, 2016 (hereinafter referred to as "I & B Code") by the Operational Creditor, viz., Innovating Hospitality through its partner Mr. Vimal Dhar, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of M/s. Oravel Stays Pvt. Ltd. (hereinafter referred to as "Corporate Debtor company").

2. The Corporate Debtor Company, M/s. Oravel Stays Pvt. Ltd., registered under the Companies Act, 1956 and having its registered office at Ground Floor-001, Mauryansh Elanza, Shyamal Cross Road, Nr. Parekh Hospital, Satellite Ahmedabad, Ahmedabad-380015 (Gujarat) vide CIN: U63090GJ2012PTC107088, date of incorporation is on 21st February, 2012.

3. The Nominal Share Capital of the respondent-corporate debtor company is Rs.1,17,20,000/- (Rupees One Crore Seventeen Lakh Twenty Thousand only) and Paid-Up Share Capital is Rs.99,99,880/- (Rupees Ninety-nine Lakh Ninety-nine Thousand Eight Hundred and Eighty only).

4. Petitioner/Operational Creditor submitted that as per Part IV of the application in Form 5, the total amount of Rs.

46,63,456.00/- (Rupees Forty-Six Lakhs Sixty-Three Thousand Four Hundred and Fifty-Six Only) is due from the Respondent/Corporate Debtor.

5. M/s Innovating Hospitality, the Operational Creditor is a registered partnership firm and engaged in the business of providing various services in the Hospitality Sector such as running of Hotels, Catering, Restaurant etc. One such hotel in the name of GG Holiday Homes was being run and managed by the Operational Creditor since 2017.

6. The Petitioner/Operational Creditor submitted that the Corporate Debtor approached and sought to run the said Hotel of the Operational Creditor by the name of GG Holiday Homes at Udaipur, under the brand name of OYO Rooms.

7. The Petitioner/Operational Creditor further submitted that vide an agreement dated 02.07.2019 between the parties herein, the said Hotel was taken over by the Corporate Debtor to be run and managed as a property of Corporate Debtor under their brand "OYO Rooms" with all the services for running the hotel i.e providing hotel staff for managing, housekeeping, maintenance, food & catering services, attending guests etc. were to be provided by the Operational Creditor herein.

8. The Petitioner/Operational Creditor stated that the Corporate Debtor has defaulted in making the payment towards the services provided by the Operational Creditor and also the amount towards Assured Benchmark Revenue from the month of October, 2019 till December, 2020 and thereafter till today. The Petitioner sent the Demand Notice dated 11.01.2020 against the outstanding default amount of Rs. 46,63,456.00/- as on 07.01.2020.

9. The Respondent Company is a private limited company and has been working in the hospitality business for several years. It has its operations spread over three divisions namely; (i) Indian Hotel Business, (ii) Technological and Brand Licensing Business and (iii) International Hotel Business. The Respondent would provide the service of booking and pricing through its online portal for the Petitioner's Hotel.

10. The Respondent has submitted in his reply that the present petition is not maintainable, inter alia, on the following grounds:

(i) The present Petition is not maintainable against Oravel Stays Private Limited ["Present Respondent"] insofar as the Indian Hotel Business of the present Respondent was transferred to OYO Hotels and the Homes Private Limited ["OHHPL"] with effect from 01.11.2019 pursuant to a scheme of arrangement which was approved by this Hon'ble National Company Law Tribunal, Ahmedabad Bench, vide its order dated 26.09.2019 and the same had been expressly intimated to all its Partners including the Petitioner. Thus, if the Petitioner has any grievance or claim, the same can be raised only against OHHPL and not against the present Respondent.

(ii) Pursuant to this Hon'ble Tribunal's Order dated 26.09.2019 whereby, the scheme of arrangement between the present Respondent and OHHPL was approved, the performance of the present Respondent's part of obligations under the Arrangement, stood transferred to OHHPL with effect from 01.11.2019. Thus, OHHPL stepped into the shoes of the Respondent w.e.f 01.11.2019 and thus, by way of restitution, rights and obligations of the present Respondent's Indian Business, inter alia, pertaining to the Marketing and Operational Consulting Agreement dated 02.07.2019, were transferred to OHHPL. Further, considering the fact that such transfer of rights and liabilities from the present Respondent to OHHPL was communicated to the Petitioner in October, 2019. Therefore, claim, if any, can be maintained only against OHHPL and not against the present Respondent. If the Petitioner disputes this privity of Contract between himself and OHHPL, this in itself creates a dispute, incapable of resolution in the current forum.

(iii) The Code does not empower the Adjudicated Authority under the Code to adjudicate a disputed claim, as in the present case.

(iv) The present Petition is malicious in nature and is not filed for the purpose of resolution of insolvency but is filed with the ulterior motive of seeking to recover alleged debt without resorting to Civil Court.

(v) Lastly, there is no debt which has become due and payable by the present or OHHPL and in absence of above, the question of default does not arise under the provisions of the Code.

11. Respondent has further submitted that the present Company i.e Oravel Stays Private Limited is a hospitality Company and has been working in the hospitality business for several years. The present Respondent has its Operations spread over three divisions namely; (i) Indian Hotel Business, (ii) Technological and brand Licensing

Business and (iii) International Hotel Business. As a part of its restructuring plan, the present Respondent had entered into a scheme of arrangement in accordance with Sections 230 to 232 of the Companies Act, 2013, whereby the Indian Hotel Business Division of the present Respondent will be demerged and transferred to OHHPL, which is one of the group Companies of OYO Group. The said Scheme of arrangement was approved by this Hon'ble Tribunal vide its Order dated 26.09.2019, with effect from 01.11.2019. Pursuant to the aforementioned Order being passed, the present Respondent had informed all its Channel Partners including the Petitioner, of such Demerger by an email in the month of October, 2019, and that in view of the same, all the Rights, liabilities and obligation under the existing commercial arrangement between the Petitioner and the present Respondent including but not limited to payments and billing, would be assumed and discharged by OHHPL after the effective date i.e 01.11.2019. Further, the said communication also stated that the settlement of all the invoices would be done by OHHPL through the present Respondent only up to 31.10.2019, thereafter any outstanding invoices would be settled by OHHPL only, irrespective of the date of the invoice, on or after the effective date. The copy of the Order dated 26.09.2019 passed by this Hon'ble Tribunal and the Communication of October, 2019 are marked and annexed hereto as Annexure-R/1[Colly].

12. Respondent has also submitted in his reply that the present Respondent and OHHPL are two separate legal entities and separate claims against both the entities are tenable in law. Thus, all the rights and obligations under the Agreement dated 02.07.2019 entered into between the

Petitioner and the present Respondent, stood transferred to OHHPL from 01.11.2019. Essentially, OHHPL had stepped into the shoes of the Respondent w.e.f 01.11.2019 and thus, by way of restitution, rights and obligations of the Respondent, inter alia, pertaining to the Agreement in question, were transferred to OHHPL. Pursuant to such transfer was OHHPL that was fulfilling the present Respondent's part of the obligations under the Agreement, of which the Petitioner is well aware. The Petitioner had received Communications dated 01.11.2019, 24.12.2019 and 31.12.2019 from OHHPL only, to which no objection has been raised by the Petitioner till date.

13. Respondent has categorically denied that an amount of Rs. 43,63,356/- (Rupees Forty-Three Lakhs and Sixty-Three Thousand Three Hundred and Fifty-Six only), as claimed by the Petitioner, is due and payable by the present Respondent/OHHPL to the Petitioner. It is stated that the alleged amount of claim has been wrongly raised against the present Respondent inasmuch as from November, 2019, the rights and liabilities of the present Respondent had been transferred to OHHPL and thus, any claim, if maintainable in the eye of law, would lie only against OHHPL and not the present Respondent. Further, the alleged claim is disputed, as the Petitioner has failed to take into consideration the monthly reconciliation statements generated by OHHPL which were shared with the Petitioner on 08.01.2020 [For December, 2019], and 13.01.2020 [For October and November, 2019], which would have a material bearing on any calculation with respect to the dues which may be payable by either party. Hence, on this ground alone the present petition is not maintainable against the present Respondent/OHHPL and

is liable to be rejected. It is further clarified that there is no claim against OHHPL as well.

14. It is submitted by the Respondent in his reply that under the Clause 3(I) of the Online terms and conditions, OHHPL has the right to suspend the listing of the Hotel properties or list them as "Sold Out" under certain circumstances as stated on the website, one of them being an on-going dispute with the Channel Partner in respect of settlement and reconciliation of accounts. OHHPL has duly submitted its monthly reconciliation statements for each month to the Petitioner, however the same could not be submitted on time for the months of October and November, 2019 on account of technical glitches in the system of OHHPL. In view of the aforementioned, OHHPL had listed the property as "Sold Out" since 01.01.2020, in view of the pending dispute of the dues owed by each party, which could not be reconciled then in the absence of the reconciliation statements being share. However, the said reconciliation statements were generated by OHHPL in the month of January, 2020 and were shared with the Petitioner on 13.01.2020. It is submitted that the Petitioner was in receipt of the reconciliation statement much before the present Petition was filed and has yet deliberately suppressed the said documents, which are material in context of the dispute between the parties.

15. The Respondent has contended regarding the payment and submitted that he has already made the payment for the month of October, November 2019, which is clearly reflected in the Bank Statements placed on record by the Petitioner, precisely at page Nos. 64-A Entry No. 21, 64-C Entry No. 87 and 64-D Entry No. 145 of the Petition.

16. The Respondent argued that the Demand Notice [Form-3] was issued by the Petitioner through their advocate Mr. Saurabh Jain on 11.01.2020 without any authority.

17. Heard the advocates for both the parties and perused the documents placed on record.

18. It is noted that the Respondent has entered into the scheme of arrangement in accordance under Section 230-232 of the Companies Act, 2013, whereby the Indian Hotel Business of the Respondent was demerged and transferred to OYO Hotels and Homes Private Limited. The said scheme was approved by NCLT; Ahmedabad vide its order dated 26.09. 2019.As per the scheme all rights, liabilities and obligations of the existing commercial arrangement of the Respondent is assumed and discharged by OYO Hotels and Homes Private Limited w.e.f. 01.11.2019. The claim of the Applicant for September, 2019 of Rs. 3,61,214/- is paid on 09.10.2019 and the claim of October, 2019 of Rs. 2,44,428/- is paid on 14.11.2019 as shown as receipt in the Bank Statement attached with the application. As per the scheme the subsequent claims from November, 2019 onwards are payable by OYO Hotels and Homes Private Limited.

19. Apart from the above various e-mails exchanged between the parties which is attached at page no. 44 to 47 of the application, which shows that there is a disputes regarding reconciliation of the amount payable for the month of November, 2019 and December, 2019 as per the e-mails exchanged prior to the issue of demand notice on 11.01.2020.

20. For the reasons stated above, this Adjudicating Authority is of the view that the instant petition does not clarify for admission against the Respondent under Section 9 of IB Code and therefore the same is rejected.

21. In view of the above discussions, the instant petition is dismissed but without any cost.

22. It is made clear that the observations made in this order shall not be construed as expression of opinion on the merits of the dispute. The rights of the Petitioner before any other Forum shall not be prejudiced on account of dismissal of the instant petition.

23. Registry is directed to communicate this order to both parties.

ChockalingamThirunavukkarasu **Adjudicating Authority&** **Member (Technical)**	**Manorama Kumari** **Adjudicating Authority&** **Member (Judicial)**

SAPNA