



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH,(Court-II)  
KOLKATA**

**C.P. (IB) No. 694/KB/2020**

*An application under Section 9 of the Insolvency & Bankruptcy Code, 2016.*

***In the matter of:***

**Casa2 Stays Private Limited [CIN U74140DL2014PTC267404]**, having its registered office at H-294, Plot 2A, First Floor, Kehar Singh Estate, Saidulajab, Lane no. 2, Saket, South Delhi – 110030;

*....Operational Creditor*

-Versus-

**Inter Leaves Private Limited[CIN U74110WB2012PTC177846]**, having its registered office at 3/2 Tiljala Lane, Kolkata – 700019;

*...Corporate Debtor*

**Date of hearing: 10 May, 2023  
Order Pronounced on: 28 August, 2023**

**Coram:**

***Smt. Bidisha Banerjee, Member (Judicial)***

***Shri Balraj Joshi, Member (Technical)***

**Appearances (via video conferencing/physical)**

For the Operational Creditor : Mr. Somnath Gangopadhyay, Adv.

For the Corporate Debtor : Mr. Anuj Singh, Adv.  
: Mr. Aman Agarwal, Adv.  
: Mr. Siddhartha Roy, Adv.  
: Ms. Trinisha De, Adv

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**ORDER**

***Per: Balraj Joshi, Member (Technical)***


1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Mayank Jhurani, Authorised Representative, Casa2 Stays Private Limited(*'Operational Creditor'*)duly authorised *vide* Authorization Letter dated 07 February, 2020<sup>1</sup>for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against Inter Leaves Private Limited(*'Corporate Debtor'*).
3. The present Petition was filed on **11 March, 2020** beforethis Adjudicating Authority. The total amount claimed in default is Rs.9,54,296/- (Rupees Nine Lakh Fifty Four Thousand Two Hundred Ninety Six only)and interest @18% till final realization. The ***date of default*** is stated to be as on**26 June, 2019**;
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs.10,00,000/-(Rupees Ten Lakh only) with subscribed share capital of Rs.1,00,000/- (Rupees One Lakhonly). Part – IV of the Petition deals with the particulars of the Operational Debt.
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
  - 5.1 TheOperational Creditor is in the business of hospitality and business management, and the Corporate Debtor is engaged in Business Process Outsourcing
  - 5.2 The Operational Creditor entered into a Service Agreement dated 12 June, 2019 with the Corporate Debtor for providing short term accommodation Services to the Corporate Debtor initsvarious properties located across India[*Annexure – E*].

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<sup>1</sup>Annexure – B, Page 18 of the Petition.

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- 5.3 As per the Agreement, the Corporate Debtor was supposed to pay its dues as per Invoice within 30 days (Thirty days) from submission thereof by the Operational Creditor.
- 5.4 Accordingly, accommodation and other hospitality services were provided by the Operational Creditor to the Corporate Debtor in its various facilities located across India. Several invoices were raised by the Operational Creditor against the services provided by them [Annexure – F].
- 5.5 The Corporate Debtor has failed to pay the amount in terms of the Invoices raised by the Operational Creditor. The Operational Creditor has been maintaining running accounts (RA) for the work done towards the Corporate Debtor
- 5.6 The statutory demand notice dated 24 December, 2019, under Section 8 of the Code, was issued by the Operational Creditor. The same was delivered to the Corporate Debtor on 01 January, 2020 [At page 130 of the Petition]. The Corporate Debtor after receiving the statutory notice, issued a reply dated 09 January, 2020 [Annexure I].
- 5.7 Till date the Operational Creditor has neither received the outstanding dues of Rs.9,54,296/- (Rupees Nine Lakh Fifty Four Thousand Two Hundred Ninety Six only) or any part payments.
- 6. Per contra, submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor would be as under:**
- 6.1 That, the allegations by the Operational Creditor are false, misconceived, and frivolous. The Operational Creditor has clearly suppressed the material facts and pre-existing disputes involved in the present case.
- 6.2 The Operational Creditor is using arm twisting tactics to coerce the Corporate Debtor to shell out money. The purported claim made by the Operational Creditor is based on some fictitious agreement, which was never signed or agreed between the parties.
- 6.3 All the services were restricted only to the contract entered into between the Parties on 12 June, 2019. Therefore, the services which are not covered

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under the said Agreement were not supposed to be a part of this Application.

- 6.4 A bare perusal of the Agreement would reflect that all the services were related to the booking of 16 (sixteen) rooms, the obligations of which have been duly complied with by both the parties.
- 6.5 Accordingly, the Corporate Debtor agreed to pay the fee and as per the said understanding, it was undertaken that all payments shall be made within a period of 30 days once the invoices are duly supplied. Accordingly, rooms were utilized for the period between June and July, 2019 as prescribed under the contract for which a bill amount of Rs.2,01,600/-and Rs.4,32,016/-, totalling to a sum of Rs.6,33,616/- was raised upon the Corporate Debtor.
- 6.6 Upon raising of the invoices the Corporate Debtor immediately took up the same with its management and disbursed a sum of Rs.5,91,800/- on account in the month of July, 2019[*Annexure – ‘R-3’*].
- 6.7 Thereafter, after the liabilities have been squared off in the month of July, 2019, the Corporate Debtor made another additional request of booking 39 rooms on a temporary basis in two properties, namely, Orchard Inn and Stay Inn which also exclusively belongs to the Operational Creditor. The said rooms were taken on a temporary arrangement and on the clear understanding that the rooms should be made available as and when the guests of business personal of the corporate debtor arrives in the said location.
- 6.8 It was mutually decided that payments and tariffs are to be raised only upon the usage of the rooms by the Corporate Debtor. There were never any understanding or contract to the effect that the Corporate Debtor shall be liable to pay for all the 39 rooms. Payments are to be made only subject to the condition that same were used by its guests for which appropriate statements, emails and payment requests are to be raised upon the Corporate Debtor.
- 6.9 On or about August 2019, the Corporate Debtor was shocked to receive emails and invoices for the entire rooms for a period of 30 days for which

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on maximum days the guests who were supposed to arrive did not come and did not use the full accommodation. As a result, an invoice of Rs.10,53,039/- was raised upon the Corporate Debtor which is clearly disputed and without any basis.

- 6.10 On 26 November, 2019 and 02 December, 2019 the Corporate Debtor had requested the Operational Creditor by writing various letters and emails asking them to provide details of the occupancy and the names of the guests who have arrived and the dates on which the accommodations were used. In response to these emails the Operational Creditor curiously and in a fictitious manner only supplied copies of the invoices which did not give a clear ad count of the accommodation availed and the period and the list of persons who have availed such accommodation.
- 6.11 Various correspondences and letters have been issued by the Corporate Debtor by way of several emails which would disclose pre-existing disputes between the parties. The account between the parties was settled and squared off before July, 2019.

***Analysis and Findings***

7. We have heard the Learned Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the documents on record.
8. The Operational Creditor by virtue of their Supplementary Affidavit filed on 16 January, 2023 has refuted the contentions made by the Corporate Debtor in its reply affidavit.
9. As per the Supplementary Affidavit, the Corporate Debtor has raised three points in their defence, which are as follows;
  - i) Invoices are produced in the petition were never furnished to the Corporate Debtor;
  - ii) Upon being asked about the guest list, the Operational Creditor has not replied;
  - iii) Page 22 of the agreement mandates that undisputed Invoices is a condition precedent.

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- 10.** In response to the defence raised by the Corporate Debtor, the Operational Creditor submits that several emails were sent by the Operational Creditor with regard to the services availed by the Corporate Debtor much prior to filing of the instant proceeding and inspite of receiving the said emails containing the Invoices, the Corporate Debtor has denied to have received the same [*Annexure – N*].
- 11.** With regard to allegation as to wrongful confinement of the guests of the Corporate Debtor, it is submitted that no complaint was ever registered by the Corporate Debtor with any authority. Further, with regard to the allegation of non-production of guest lists raised by the Corporate Debtor, it is specifically and categorically stated that Operational Creditor, who runs its business under the name and style of FabHotels, does not own any hotels. It is stated that the hotels are owned by 3rd party individuals and FabHotels only provide them their brand name subject to compliance of Standard Operational Procedures. FabHotels thereafter provide the hotel booking only through its website named [fabhotels.com](http://fabhotels.com) or through its call centres and the Operational Creditors are not involved in day-to-day operation of such hotels. The Operational Creditor is, in no way, entitled under the law to obtain details of the guests.
- 12.** Be that as it may, with respect to such contention of the Operational Creditor, it is expedient to mention that all the Hotel Service provider maintain a records with themselves for the list of guests.
- 13.** From the records it is evident that nowhere, the Corporate Debtor has denied to the services availed by them, but it was mutually decided that payments and tariffs are to be raised only upon the usage of the rooms by the Corporate Debtor. Payments are to be made only subject to the condition that same were used by its guests for which appropriate statements, emails and payment requests are to be raised upon the Corporate Debtor.
- 14.** When an invoice of Rs.10,53,039/- was raised upon the Corporate Debtor. The Corporate Debtor on 26 November, 2019 and 02 December, 2019 had

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requested the Operational Creditor by writing various letters and emails asking them to provide details of the occupancy and the names of the guests who have arrived and the dates on which the accommodations were used. Hence, this makes the invoices clearly disputed.

15. In *Kailash Nath Associates v. Delhi Development Authority and Another*<sup>2</sup> the Hon'ble Apex Court has settled that a claim for damages does not give rise to a crystallised debt unless there is an adjudication by a Court of competent jurisdiction that such damages are payable.
16. Further, in *Mobilox Innovations (P) Ltd. v. Kirusa Software Private Ltd.*<sup>3</sup> to contend that where “it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence” and “the defence is not spurious, mere bluster, plainly frivolous or vexatious”. Where it is found that “a dispute does truly exist in fact between the parties, which may or may not ultimately succeed” and it was held that “the Appellate Tribunal was wholly incorrect in characterising the defence as vague, got up and motivated to evade liability”.
17. Further that in *S.S. Engineers v. Hindustan Petroleum Corporation Limited & Ors.*<sup>4</sup> while referring to *Mobilox Innovations (P) Ltd. (Supra)* Hon'ble Apex Court held that “When examining an application under Section 9 of the IBC, the Adjudicating Authority would have to examine (i) whether there was an operational debt exceeding Rupees 1,00,000/- (Rupees One Lac); (ii) whether the evidence furnished with the application showed that debt exceeding Rupees one lac was due and payable and had not till then been paid; and (iii) **whether there was existence of any dispute between the parties** or the record of pendency of a suit or arbitration proceedings filed before the receipt of demand notice in relation to such

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<sup>2</sup>(2015) 4 SCC 136

<sup>3</sup>(2018) 1 SCC 353

<sup>4</sup>2022 SCC OnLine SC 1385

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*dispute. If any one of the aforesaid conditions was not fulfilled, the application of the Operational Creditor would have to be rejected.”*

- 18.** In view of the analysis given above, we hold that there was a pre-existing dispute when the Company Petition was filed and as such cannot be sustained under Section 9 of IBC 2016. Hence, C.P **(IB) No. 694/KB/2020** is **rejected**. However, the Operational Creditor is at liberty to resort to other remedies that may be available under any other law.
- 19.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

The Order is pronounced on 28<sup>th</sup> day of August, 2023

SA [LRA]