

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2



ITEM No.301
CP(IB)/28(AHM)2023

Proceedings under Section 9 IBC

IN THE MATTER OF:

MindMill Software Limited
V/s
OYO Hotels & Homes Private Limited

.....Applicant

.....Respondent

Order delivered on 30/11/2023

Coram:

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

PRESENT:

For the Applicant :
For the Respondent :

ORDER


The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

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

CHITRA HANKARE
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
(COURT NO.II)**

CP(IB) No. 28 / NCLT / AHM / 2023

[Application Under Section 9 of the IB Code, 2016 & Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER BETWEEN

Mindmill Software Ltd. ... Operational Creditor
Vs.
Oyo Hotels & Homes Pvt. Ltd. ... Corporate Debtor

Order pronounced on: 30.11.2023

Coram:

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

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



MEMO OF PARTIES

Mindmill Software Ltd.

Having registered office at

J-1/28, First Floor,

Khirki Extention, Malviya Magar,

New Delhi-110017

... Operational Creditor

Versus

Ms. Oyo Hotels 7 Homes Pvt. Ltd.

Having registered office at

Ground Floor-001, Mauryansh Elanza,

Shyamal Cross Road, Nr Parekh Hospital,

Satelite, Ahmedabad -380015

... Corporate Debtor

Appearance:

For the Applicant : Mr. Bhargav Thakkar, Adv.

For the Respondent: Mr. Navin Pahwa, Sr. Adv. a.w

Rohan Lavkumar, Adv. &

Ms. Anushree Soni, Adv.

JUGEMENT

1. The application is filed by M/s Mindmill Software Limited (CIN U74899DL1996PLC082607) under Sec 9 of the IBC, 2016 for the purpose of initiating CIRP against the Corporate Debtor - M/s OYO Hotels and Homes Pvt Ltd (CIN - U74900GJ2015PTC107035) on its inability to repay an



amount of Rs.1,83,60,100.01/- (Principal outstanding of Rs.1,33,04,179/- plus interest at the rate of 18% amounting to Rs.22,55,227.40/- plus GST of Rs.28,00,693.22/-) owed to the applicant.

2. The applicant submitted that applicant and corporate debtor entered into an agreement on 25.07.2023 for lease of the Office Premises located at Unit No. at 2nd Floor, 24A, Film City, Noida, UP 201301. There was a lock-in period of 3 years as per the terms and conditions of the Agreement starting from 01.09.2019 (handed over possession date) till 31.08.2022. But the respondent stopped payment of the rent after March 2020. The applicant stated that there was an addendum signed on 17.07.2020 for rent, which was waived for the period from 25.03.2020 to 08.06.2020 and subsequently from December 2020 the rent became due and payable for which on non-payment, a demand notice was issued by the applicant in terms of Rule 5 of IBC on 30.08.2022 for an amount of Rs.1,83,60,100.01/-. The board of the applicant approved necessary action under the provisions of IBC on 27.08.2022. The date of default is reckoned as 01.12.2020 when the instalment was due for payment which was not paid by the corporate debtor.
3. The respondent corporate debtor submitted that vide email dated 27.03.2020 he had unequivocally invoked the Force Majeure Clause in the lease deed giving a notice of Force Majeure/Unforeseeable event. From the period of 10.06.2020 to 04.07.2020 the parties exchanged various emails and negotiations for revising the terms and



conditions of the Agreement in light of the altered circumstances caused due to the pandemic. Pursuant to the negotiations, the parties entered into an Addendum to Lease Deed dated 25.07.2019. In their email dated 02.12.2020 the corporate debtor had discussed various points including the COVID 19 situation and their intention to vacate the office at Noida. The applicant is stated to have backed out of proposed Mutual Termination and Settlement Agreement by sending an email on 29.12.2020. The termination notice dated 06.01.2021 was served by M/s Oravel Hotels (demerged company to OYO Hotels Ltd (respondent) clearly stating that due to COVID 19 pandemic situation, OYO was unable to use and utilize the said premises and on that account it was exercising its right to terminate the lease deed. The applicant vide an email dated 18.01.2021 replied to the above stated notice wherein it stated that the Termination Notice issued by the Respondent is invalid and further expressed its intention to initiate arbitration proceedings. On 25.01.2021, the applicant issued a notice to corporate debtor under section 21 of The Arbitration and Conciliation Act, 1996, invoking arbitration clause of the Lease Deed. The respondent replied to the aforementioned notice on 19.03.2021 bringing to the notice of the applicant that the agreement has been terminated on 06.01.2021. The corporate debtor vide their letter dated 12.09.2022 in reply to the Demand Notice dated 30.08.2022 by the applicant stated that the stated lease agreement executed between the predecessor of the CD (Oravel Stays Pvt Ltd) can never be



said to be an operational debt as the claim is in the nature of damages for termination of stated lease agreement. It also mentioned that the applicant had not agreed with the termination notice issued on 19.01.2021, and on 25.01.2021 the applicant had decided to invoke Arbitration and proceedings were initiated and an arbitrator Mr. Nitin Kumar was appointed. The matter is still under progress before the arbitrator.

4. Based on the documents submitted and the arguments, it appears that the Corporate Debtor (Respondent) had not agreed to the Arbitration process; however applicant continues parallel process by filing this application under Sec 9 of the IBC 2016. The Corporate Debtor having terminated the agreement and not having agreed to arbitration process is itself a dispute which has arisen before receipt of demand notice under Section 8 of the IBC. The applicant has terminated the agreement invoking Force Majeure (loosing of business during COVID 19) for which there was a clause in the Lease Agreement (Para 14) and permits on notice to nullify any further payments to be made as per the lock in period. The dispute has arisen as the rental dues sought is for the rental loss suffered by applicant during lock-in period when the termination of the agreement by the corporate debtor has taken place.
5. The corporate debtor has in this regard given a compilation of following judgments 1. Milkfood Ltd. v. GMC Ice Cream (P) Ltd. [(2004) 7 SCC 288]; 2. Rajratan Babulal Agarwal v. Solartex India Private Limited [(2023) 1 SCC 115]; 3. Deepak



Modi v. Shalfeyo Industries Pvt. Ltd. [2023 SCC Online NCLAT 169]; 4. Chandrashekhar Exports Pvt. Ltd. v. Babanraoji Shinde Sugar & Allied Industries Ltd. [2023 SCC Online NCLAT 495]; 5. Pramod Yadav & Anr. v. Divine Infracon Pvt. Ltd. [2018 SCC Online NCLAT 312] vide his affidavit dated 1 November 2023 along with a written submission which have been taken on record.

6. Further, in the judgment by NCLAT in KK Ropeways Ltd V Billion Smiles Hospitality, it observed that arbitration proceedings and IBC proceedings cannot be conducted simultaneously. It pointed out that since the arbitral award arose from the rental dispute, and the corporate debtor had already filed an appeal against the award, the operational debt could be only be considered under dispute. Further Mobilox Innovations P Ltd v Kirusa Software (P) Ltd judgment revolves around the contractual dispute between the appellant and the respondent. The ruling also discourages parties from engaging in forum shopping, where they attempt to pursue simultaneous remedies in both arbitration and insolvency forums to achieve favourable outcomes.
7. The Hon'ble Supreme Court also affirmed the position in Brij Raj Oberoi V Secretary of Tourism and Civil Aviation (decided on 18.08.2022) that disputes involving lease matters can be referred to arbitration. The debt in due in this relevant case before this Tribunal is of rental dues payable during the lock-in period which is disputed due to termination of the agreement.



8. The contention of the applicant that a right to claim the disputed amount due for the remaining lock-in period is not sustainable, in view of the termination of the lease agreement which was exercised by invoking the inbuilt clause by corporate debtor for which a separate recourse has already been initiated by the applicant.
9. Based on various submissions and documents produced by both the parties, the tribunal came to the conclusion that under these circumstances CIRP cannot be initiated against the corporate debtor. Hence the Tribunal is passing the following order:

ORDERS

The CP(IB) 28 of 2023 is rejected.

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

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CHITRA HANKARE
MEMBER (JUDICIAL)