<u>IN THE COURT OF LXXXIX ADDL.CITY CIVIL & SESSIONS JUDGE, BENGALURU. (CCH-90)</u>

<u>Present:</u> Sri.S.J.Krishna, B.Sc., LL.B.,
LXXXIX Addl.City Civil &
Sessions Judge, Bengaluru.

<u>Dated: 13th DECEMBER 2021</u>

<u>Com.A.A.No.187/2019</u>

<u>APPLICANT</u> : Royal Orchid Associated Hotels Private Limited,
A Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 1, Golf Avenue, Kodihalli, Off Airport Road, Bengaluru-560 008, represented herein by its Chief Financial Officer and authorised signatory, Mr.Amit Jaiswal.

(By CrestLaw Partners)

-Vs-

<u>RESPONDENT</u> : Sri.Rajendra Singh Rathore,
S/o Ranveer Singh Rathore,
Aged about 43 years,
R/at Dada Poultry Farm,
Lohagal, Ajmer,
Rajasthan-305 023.

(By Sri.M.Rajashekar, Advocate)

ORDER

The applicant has filed this application under Section 9 of Arbitration & Conciliation Act, 1996 seeking an order of temporary injunction restraining the respondent, his agents, representatives, successors-in-interest and anyone claiming under/through him from interfering, obstructing and/or in any manner impeding, either directly or indirectly with the petitioner's management, operations and discharge of duties at the aforesaid Hotel under the Hotel Operation Agreement dated 17.11.2017; grant an order of temporary injunction restraining the respondent, and his agents, representatives, successors-in-interest and anyone claiming under/through them from stopping/halting petitioner's operations of the Hotel pending adjudication of disputes between the parties; grant an order of temporary injunction restraining the respondent, and his agents, representatives, successor-in-interest and anyone claiming under/through them from attempting to terminate the Hotel Operation Agreement dated 17.11.2017 pending adjudication of disputes between the parties and such other reliefs.

02. After the service of notice, the respondent appeared through his advocate. The Respondent has filed statement of objections to the application.

03. I have heard the arguments addressed by the learned advocates on record. They have also filed written arguments. I have gone through the materials available on record.

04. The following points arise for my determination:

(1). Whether the applicant has made out a case so as to allow the application filed under Section 9 of Arbitration & Conciliation Act, 1996?

(2) What Order ?

05. My findings on the above points are as follows:-

Point No. 1 : - In the Affirmative
Point No. 2 : - As per final orders for the following

REASONS

06. **Point No.1:** The applicant has filed this application under Section 9 of Arbitration & Conciliation Act, 1996 seeking an order of temporary injunction restraining the respondent, his agents, representatives, successors-in-interest and anyone claiming under/through him from interfering, obstructing and/or in any manner impeding, either directly or indirectly with the petitioner's management, operations and discharge of duties at the aforesaid Hotel under the Hotel Operation Agreement dated 17.11.2017; grant an order of temporary injunction restraining the respondent, and his agents,

representatives, successors-in-interest and anyone claiming under/through them from stopping/halting petitioner's operations of the Hotel pending adjudication of disputes between the parties; grant an order of temporary injunction restraining the respondent, and his agents, representatives, successor-in-interest and anyone claiming under/through them from attempting to terminate the Hotel Operation Agreement dated 17.11.2017 pending adjudication of disputes between the parties and such other reliefs.

The summary of the case of the applicant is as under:

07. The petitioner is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at the address stated in the cause title. The petitioner was incorporated in the year 1986 for carrying on the business, inter alia, of operating hotels and providing hospitality services in India. The petitioner is engaged in the business of running, managing, administrating and operating hotels and other business in the hospitality sector and has established itself as one of the most reputed companies in the said business. The petitioner is part of the prestigious Royal Orchid Group of hotels which has been operating fifty (50) business and leisure hotels in India and abroad for more than

two decades under the brand names “Royal Orchid” and “Regenta”. The qualities of services which are associated with this brand are well reputed in the hospitality services sector.

08. The Royal Orchid Group being one of India’s finest and fastest growing hotel chain and being one of the most sought-after hospitality brands in the industry, enters into hotel operation agreements with landowners or owners of hotel properties, guiding them on delivering end-to-end solutions, starting from design conceptualization to viably manage the operations of the hotels and resorts. The petitioner operates its hotels under the brand “Royal Orchid”. The petitioner vide such operational agreements, deploy its operating expertise to manage such hotels or resorts in consideration of management fees based on revenue an operational profits. The petitioner is represented in these proceedings by its Chief Financial Officer and authorized representative, Mr.Amith Jaiswal.

09. The respondent represented that he is the owner of immovable property situated at Motisar Road, near Mela Ground, Pushkar, Rajasthan State. The respondent was desirous of building, furnishing and equipping a modern star hotel approximately 58 rooms situated on the aforesaid property. The respondent being aware that the petitioner has

the requisite knowledge, expertise and market experience for building and operating such a hotel, approached the petitioner to seek guidance on building the Hotel and subsequently operate and manage the hotel which was proposed to be constructed on the property under the brand name of Royal Orchid Hotels.

10. The petitioner, after several rounds of negotiations and discussions, entered into Hotel Operation Agreement dated 17.11.2017 with the respondent (‘Agreement’) for the purpose of providing technical on building the hotel and to operate the Hotel, for a period of 10 years extendable by mutual consent of both parties commencing from the date of opening of the Hotel.

11. In terms of the agreement, the petitioner extended its technical skills and expertise and provided professional advice on the architecture, engineering, interior design, furnishing and equipping of the Hotel. The petitioner deputed several resources from its end in advising on technical inputs, detailing and designing inputs for the Hotel. The petitioner, at its own cost and expense, has deputed various teams to train the staff of the respondent and provide them technical expertise and know-how in order to operate and manage a Hotel of this caliber. The petitioner has invested large sums of money in

this exercise in order to ensure that the Hotel meets the standards of a modern, luxury hotel of international standards. The petitioner has also expended enormous efforts and spent vast sums of money to promote the hotel at trade fairs and other marketing platforms.

12. The petitioner's technical inputs in this regard were one of the fundamental features of the agreement. The respondent, who is a novice in the hotel industry, was keen on tapping the petition’s experience and know-how in establishing a premier hotel. The land and hotel are more fully described in the schedule written hereunder and is hereinafter referred to as the schedule property. The operations of the Hotel commenced on October 2017, which is the start date for determining the term of the agreement.

13. The petitioner is appointed, under the agreement, as the sole and exclusive operator of the Hotel. In consideration of operating the Hotel, the petitioner is required to be paid management fees as provided in Article XII of the agreement. In terms of the Article XII of the Agreement, the respondent is required to pay the petitioner a “Basic Management Fee’ for carrying out management and operations of the Hotel, a sum equivalent to 3% of the total revenue of the Hotel and is inclusive of the gross operating expenses. In addition to the

Basic Management Fee, the petitioner is also entitled to an "Incentive Management Fee". This fee is equivalent to 6% of the gross operating profit of the Hotel. Therefore, the petitioner's fee is driven entirely on the performance and profits of the Hotel.

14. In terms of Article II of the Agreement, it has been agreed that the exclusive rights to manage and operate the Hotel vests with the petitioner. The petitioner, inter alia, has the exclusive role to perform the following duties/activities.

1. Recruitment, appointment, termination of employment etc.,
2. Formulation and administration of all personnel policies,
3. Fixing of all prices, rates and tariffs;
4. Budgeting and maintenance of suitable records and books of accounts;
5. Granting discounts and complimentary rooms or stays'
6. Performing all acts and rendering all services necessary in connection with the operation of the Hotel.

15. The respondent waited for the petitioner to set up the Hotel as per international standards, used to know-how and

vast experience in the hotel industry to get the Hotel up and running. In terms of Article VIII, the petitioners extensively marketed and popularized the Hotel, through trading, channels, travel agents, travel portals and websites and through its own marketing agents to ensure that the Hotel's business picks up and the purpose for which the Hotel operation agreement was executed is achieved. The petitioners have actively assisted in identifying, recruiting and training the staff who several hotels all over India. Now that the hotel is ready for extensive operations, the respondent has sought to ease out the petitioner from the Hotel with blatant malafide intention and completely usurp the operations of the Hotel and thereby deny the petitioner its rights under the Hotel operation Agreement. To achieve such an objective, the respondent has commenced interfering with the day-to-day affairs of the petitioner's conduct of the Hotel.

16. Despite the petitioner's efforts, the respondent has attempted to interfere in the day-to-day operations of the Hotel in gross violation of the terms of the Agreement. The breaches committed by the respondent have been broadly listed below:

> Article V(9) expressly covenants that the respondent shall ensure that the Hotel is available to the petitioner for operation and maintenance

without any let or hindrance from anyone. However, these terms have not been adhered. Teh petitioner is now being subjected to unwarranted interference in the management and operation of the Hotel by the respondent, which has affected the productivity of the hotel. The respondent has threatened to take over the preparation of accounts and handling of budgetary expenses for the hotel, which is exclusively in the domain of the petitioner in terms of the agreement.

Article V(10) states that the respondent shall not interfere with the day-to-day operation of the hotel. However, the respondent, in collusion with the employees, are attempting to completely force out petitioner from the management of the hotel. Since March, 2019, the respondent has instructed all the employees not to cooperate with the petitioner. The respondent has instructed his employees not to forward daily reports to the petitioner.

17. The respondent has instructed his employees not to forward the daily reports to the petitioner for mischievous reasons, which has not been discovered by the petitioner. The respondent has been suppressing the daily reports and the

exact sales that are happening each month. In an attempt to exclude the petitioner from the business and in gross violations of his obligations under the agreement, the respondent has let out rooms in the hotel privately, without raising an invoice on the said customers. The said illegal acts are being done in order to create a situation and create a circumstance that the total revenue of the hotel is low and thereby illegally attempted to reduce the petitioner's management fee.

18. The respondent has also delayed in providing expense reports to the petitioner for the purpose of preparing a budget for the hotel. Preparing a budget for the hotel is essential to forecast the revenues and growth of a hotel for a particular financial year. The respondent has thereby breached its obligation not to interfere with the day-to-day operation of the hotel.

19. In terms of Article II 2.10, the petitioner has the exclusive right to grant discounts and complimentary rooms or stays to customers. However, the respondent has interfered in this function and prevented the petitioner from offering complimentary rooms to long-standing and valued customers who have provided a lot of business to the petitioner. One such instance occurred on 19.06.2019 when the respondent

flatly refused to offer a complimentary room to a customer named “Vermigo’.

20. In terms of Article V(e) of the Agreement, the respondent is also under the obligation to maintain the hotel at all times as per international standards. The respondent has failed to do so. The petitioner has in this regard had a meeting on 12.03.2019 with the respondent to discuss the items that needed to be included in the Hotel and the areas that need improvement.

21. The petitioner has also addressed an e-mail on 24.07.2019 addressing the concerns in the standards and upkeep of the Hotel. It was noticed that (I) the colour of the swimming pool was green in colour, (ii) there was water coming inside the bed rooms during rain, (iii) pest control is not being undertaken on the property at regular intervals and (iv) the restaurant ceiling wall papers are peeling off at many places etc.,

22. The respondent has also defaulted in payment of the Basic Management Fee and the Incentive Management Fee to the petitioner. The total sum owed by the respondent to the petitioner in this regard is ₹.3,40,498/-. The respondent has breached its obligations under Article XII of the Agreement by

defaulting to make these payments. The respondent is also liable to pay the petitioner the incentive management fee on the unbilled sales amount.

23. In terms of the agreement, the bank account of the hotel is to be maintained jointly for smooth operation of the hotel. However, the respondent is also attempting to interfere with the petitioner's operation of the bank account and restraining the petitioner from accessing the same.

24. The facts narrated above will demonstrate beyond any doubt that the respondent has been in continuous breach of the terms of the agreement. The petitioner having learnt of the respondent's fraud in concealing sales has approached the respondent with the said figures. In response, to the petitioner's shocked to receive an email dated 07.08.2019, falsely stating that the petitioner has failed to provide any business. In the said email, the respondent on the false pretext of not providing adequate business, states that it wishes to terminate the agreement. Further, in the said email, the respondent has informed the petitioner that the respondent will stop payment of salaries to the staff and would operate the hotel unilaterally. This is an abject breach of the agreement. It is evident that the respondent had no intention to ever honor the terms of the agreement.

25. It is also pertinent to highlight at this juncture that the agreement provides for a lock-in period of 4 years. Article XXIV (3) of the agreement reads as follows:

> "The first four years of the terms of the Contract starting from the effective date shall be considered as a lock-in-period. During the terms of contract starting from the effective date the Owner shall not be entitled to terminate this contract under any circumstances except in the case of sale of Hotel as specified under Article XX"

26. In view of the same, the letter issued by the respondent is untenable and has no force of law. The respondent is bound by the terms of the agreement which stipulates a lock-in period of 4 years. The respondent cannot terminate the agreement under any circumstances. It is needless to state that the reason for including a lock-in clause is to protect the petitioner, who has invested considerable resources into the hotel. The benefits that the parties would receive as a consequence will only materialize over a period of time. The respondent having received all benefits of the agreement from the petitioner including technical inputs and expertise to build, furnish, design and commence operations, is now attempting to terminate this agreement in order to deny the petitioner of the future benefits that will accrue from managing the hotel.

27. The respondent, after availing of the petitioner’s expertise in settling up of the hotel, training the staff, providing technical inputs is now seeking to forcibly push the petitioner out and ultimately terminate the agreement. This has been demonstrated by the respondent on several occasions.

28. The petitioner, at its own cost and expense, has been deputing various teams to train the staff of the respondent and provide them technical expertise and know-how in order to operate and manage a hotel of this caliber. The petitioner has invested large sums of money in this exercise in order to ensure that the hotel meets the standards of a modern, luxury hotel of international standards. The petitioner has also made great efforts and expended vast sums of money to promote the hotel at trade fairs and other marketing platforms.

29. The respondent’s threats and actions toward terminating the agreement constitute a breach of the agreement. The petitioner would suffer severe financial loss it its investment in the hotel were revoked, without adhering to the stipulated term of contract.

30. The only pretext, albeit false, under which the respondent is threatening to terminate the agreement is that

the petitioner is allegedly making losses on the hotel. This is blatant falsehood. The respondent has been suppressing the actual sales of the hotels. In any event, the agreement does not stipulate a minimum percentage of sales that has to be made. In these circumstances, it is evident that the conduct of the respondent is wholly malafide. The petitioner has also made several bookings in the coming months in the hotel through its group website.

31. Despite of aforesaid, the petitioner has held talks with the respondent after receiving the e-mail dated 07.08.2019, in order to amicably resolve the existing issues. The respondent has informed the petitioner that it will hold back on its proposed actions. However, the petitioner was shocked to receive another e-mail from 28.08.2019 from the respondent informing the petitioner that it requires to hand over the website and other documents of by the end of this month.

32. It is reiterated herein that each of the aforesaid instances constitutes a material breach of the contract by the respondent. It is wholly apparent from the email dated 07.08.2019 and 28.08.2019 that respondent has no intention of honoring the terms of agreement. It is stated that the petitioner is in danger of being put to irretrievable harm and irreparable injury if the operations of the hotel are interfered

within the manner indicated by the respondent. This would not only drain the large investments already made by the petitioner, but gravely damage the reputation of the petitioner as one of India's biggest names in the hospitality industry. Moreover, the petitioner would be constrained to cancel all Hotel bookings made by persons across India on the pretext that it is a Hotel operated under the Regenta brand. This would invite potential lawsuits from its customers and burden the petitioner with unrequited legal expenses to defend it. Moreover, it would amount to breakdown of goodwill, which the petitioner has worked hard over decades in a grueling and competitive industry.

33. The respondent has waited for the petitioner to set up the hotel as per international standards, use its know-how and vast experience in the hotel industry. In terms of Article VIII, the petitioner extensively marketed and popularized the Hotel, through trading channels, travel agents, travel portals and websites and through its own marketing agents to ensure that the hotel's business picks up and the purpose for which the hotel operation agreement was executed is achieved. The petitioner has actively assisted in identifying, recruiting and training the staff who are employed in the hotel, in the same standards as it would in any of its own several hotels all over India. Now that the Hotel is ready for extensive operations,

the respondent has sought to ease out the petitioner from the hotel with blatant malafide intention and completely take over the hotel and thereby deny the petitioner its rights under the agreement.

34. The petitioner reasonably apprehends that the respondent will attempt to deny the petitioner access to the bank accounts of the hotel in accordance with the terms of agreement. This will seriously impact the petitioner's ability to efficiently and smoothly run the affairs of the hotel. The petitioner will be put to irreparable harm if the respondent forcibly takes over the operation of the hotel.

35. Therefore, the petitioner is constrained to approach this Hon'ble Court and seek injunctive reliefs restraining the respondent from interfering with the management of the affairs of the hotel and taking any steps to take over operations of the hotel to the exclusion of the petitioner. Unless the respondent is injuncted by this Hon'ble Court, he is likely to enter into Hotel Management Agreement or other arrangements with third parties, or deal with the hotel property without honoring his obligations to the petitioner under the agreement. In view of the lock-in period in the agreement, the balance of convenience lies in favor of granting the petitioners an injunction as prayed for. It is

submitted that grave injustice will be caused to the petitioner if the respondent is allowed to give effect to the terms of its email dated 07.08.2019 and 28.08.2019.

36. It is evident that disputes and differences have arisen between the parties under the agreement. The agreement, at Clause XXVIII, stipulates that the parties shall resolve their disputes under the agreement by way of arbitration. The arbitration clause reads as under:

1. *In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the parties hereto shall use their best efforts to settle the disputes, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and recognizing their mutual interest, attempt to reach a just and equitable solution satisfactory to both parties. The parties agree to meet to pursue resolution through negotiation before resorting to litigation. If they do not reach such solution within a period of 30 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be referred to exclusive jurisdiction of court of Bangalore or parties may opt to settle the disputes by arbitration in accordance with the provisions of the Arbitration & Conciliation Act, 1996.*
2. *The venue of the arbitration shall be Bangalore. The proceedings of arbitration shall be conducted in English by a sole arbitrator jointly appointed by the parties. If the parties fail to*

> *mutually agree on an arbitrator, arbitrator shall be appointed in terms of the Arbitration & Conciliation Act, 1996. The decision and award of arbitrator shall be binding upon both Owner and Operator".*

37. The petitioner undertakes to initiate arbitration under the above mentioned clause for adjudication of disputes. It is submitted that the entire efforts of the petitioner in ensuring that the dispute are resolved through arbitration would be rendered a nullity if the respondent enters into an operation and maintenance agreement with a third party or any other service agreement or arrangement of like nature with a third party.

38. The agreement, at Clause XXVIII further stipulates the position of parties in the event of disputes arising between parties. The relevant provision is extracted hereunder to read as:

> "3.Except the matter in controversy or in dispute, all other terms and conditions of this agreement shall remain in full force and effect, pending the award of the arbitration proceedings".

39. In light of the aforementioned clause agreed to by both parties, the agreement shall remain in force during

pendency of adjudication of the disputes between the parties. The petitioner submits that in light of the disputes that have arisen between the parties, the same needs to be resolved by way of arbitration. However, in the interim, the parties have clearly accepted that the agreement and the terms contained therein shall continue to have effect and force and shall be honored by the parties. In view of the same, this Hon'ble Court ought to grant an injunction to restrain the respondent from unilaterally and unlawfully terminating the agreement and attempting to render it a nullity without a determination made as to its correctness by an arbitrator. The balance of convenience lies firmly in favor of the granting an injunction to the petitioner as prayed for.

40. The apprehension of the petitioner is real, serious and grave, as has been expressly stated by the respondent in its email dated 07.08.2019 and subsequently on 28.08.2019. The respondent is seeking to forcefully evict the petitioner and exclude the petitioner from the hotel operations to ensure that the very subject matter of the arbitration would be unenforceable.

The case of the Respondent is as under:

41. The petitioner has not come to the court with clean hands and suppressed the material and substantive facts as

such not entitled to invoke the jurisdiction of the Hon’ble Court.

42. That the petitioner has not made out any case for interference by this Hon’ble Court as the scope for interference is very limited as per the numerous pronouncements of the Hon’ble Apex Court.

43. The petitioner is trying to play with the administration of justice by making false and misleading averments in order to escape its liabilities under law for non performance, Dubious and illegal modus operandi to divert and retain cash flows of the respondent, causing accumulation of losses and making the property debt ridden because of its incompetence and dereliction of contractual duties and breach of contract.

44. Neither the main application filed under Section 9 of the Arbitration and Conciliation Act, 1996 nor the interim applications (I.As 1 &2) filed under Order 39 Rules 1 & 2 are maintainable, as the petitioner has approached this Hon’ble Court with suppression of material facts and with unclean hands and as such the same deserves to be rejected with heavy costs.

45. The respondent in the address mentioned herein, Rejendra Singh Rathore, Proprietor, Hotel Pushkar Fort, R/at

Hotel Pushkar Fort, Motisar Road, Ganahera, Teh-Pushkar, District Ajmer, State of Rajasthan-305 022. The schedule property is nothing but the Hotel Pushkar Fort which is also the residence of the respondent who has been living there with his family since 2006.

46. The respondent is sole and absolute owner of the scheduled property, Hotel Pushkar Fort. He is qualified, experienced and established Hotelier with qualifications in Hotel Management and Catering from International Institute of Hotel Mangement (IIHM) Kolkatta, 1999 Batch and has 22 years experience in the hotel industry. In 2006, respondent built a nice hotel with 58 rooms having very good infrastructure and amenities with 50,000 sq.ft of built up area (BUA) on a plot of 1,21,500 sq.ft approx. Pushkar is much sought after destination by tourists and devotees from India and Abroad. He established this hotel over a span of decade by branding, marketing, sales promotions and y creating a network of ONLINE TRAVEL Agents, Booking Agents, Travel Companies and other channels under the name and brand of HOTEL PUSHKAR FORT. The Hotel, Built, Managed and Operated since 2006 by the respondent has been a profitable established enterprises from inception till 2017. The Hotel Pushkar Fort as been Resort Affiliate of RCI, a part of Wyndham Destinations Networks, Wyndham is a global Hotel

Management Company with presence in over 10 Countries. Hotel Pushkar Fort has won RCI Hospitality Award in 2014 based on Resort quality, service Delivery and overall holiday experience and Trip Advisor Certificate of Excellence-2013 Award based on 4 star ratings by the guests.

47. The petitioner, Royal Orchid Associated Hotels Pvt.Ltd., is a company incorporated vide CIN U55101KA2006PTC040290 on 25.08.2006. Its PAN no isAADCR4561K. Its business activity is Management Consultation Services. It has authorized, subscribed and paid up capital of ₹.50,00,000 only. The company Principal Officer/Managing Director is Mr.Amlan Kumar Dasgupta DIN 06436165. The Shareholding pattern is 96% of total shares of the petitioner company are held by another company A B Holdings Pvt., Ltd., located at No.47/1/Manipal Centre, Dickenson Road, Bengaluru-560 038.

48. The petitioner company performance has been dismal as recorded in the financial results filed with ROC. Its indebtedness has increased from ₹.689.54 lacks as on 31.03.2019 to ₹.872.71 lakhs as on 31.03.2020 and profit after tax has dwindled from ₹.191.53 lakhs to merge ₹.28.82 lakhs and the same is evident from document No.4.

49. That further the Holding company of the petitioner is a A B Holding Pvt., Ltd., has CIN U70102ka2006ptc040894 registered on 9.11.2006, PAN AAGCA0320C. This holding company has authorized, subscribed and aid up capital of ₹.26 lakhs only. The company Principal Officer/Managing Director is Mr.Vikas Passsi DIN 07040355. The Shareholding pattern is Royal Orchid Hotel Limited CIN L55101KA19 886PLC007392 is 96.16% of total shares of the Holding company located at No.1 Golf Avenue Adjoining KGA Golf Centre, Airport Road, Bengaluru-560 008 and 1.92% shares are held by Arjun Baijee and 1.92% shares are held by Sunita Baljee, both resident at No.1245, 3rd Mian, Defence Colony, Indiranagar, Bengaluru. The Holding Company has zero turnover and Net worth of ₹.1,41,40,839/-. The negative net worth of the holding company implies, it has more liabilities than assets. It indicates that business is insolvent or bankrupt.

50. The averments made at para 3 are wrong and denied that the petitioner company was incorporated in 1986. Instead it was incorporated in 2006. It is wrong and denied petitioner has established itself as one of most reputed companies in the said business. In fact, the performance of the petitioner has been dismal and it is a loss making company and reflects unprofessional management. It has unsecured indebtedness of ₹.8.72 Crores, which is increasing year on

year and its Holding Company AB holding Pvt.Ltd., is Insolvent and Bankrupt with Negative net worth of ₹.1,41,40,839. The reference to Royal Orchid Group of Hotels of which petitioner is claiming to be part, that has been operating hotels, has no relevance in the present context. Royal Orchid Group of Hotels is not a business entity per se, it is generically referred as cluster of business entities. The names, CIN and insidious link of its component companies is neither known nor within the purview of the matter on hand. Even the main company Royal Orchid Hotels Ltd., and its Associates Income has dropped from ₹.101.82 Crores to ₹.53.40 Crores and Profit After Tax has dropped from ₹.5.76 Crores to Loss of ₹.34.55 Crores from 2017 to 2021 respectively. Therefore, dealing with petitioner or its affiliates is fraught with utmost perils and risk.

51. That the contents of para 4 are wrong and denied. The Royal Orchid Group is not a legal entity per se. It does not have CIN, Pan or GST Registration. It is a generic reference by the petitioner company to deliberately camouflage its legal identity. It is hiding its true identity behind a non legal entity. The Royal Orchid Group would broadly refer to cluster of component companies with cross shareholdings and directorships which respondent is neither aware nor it has any relevance whatsoever to the present matter on hand. The petitioner company and to layers of its holding companies

referred above corroborate that the petitioner company is loss making, poorly managed and heavily debt ridden. It is held by bankrupt an insolvent company with negative net worth as stated supra paras. It is a white lie that Royal Orchid Group is India's finest and fastest hotel chain. The parent company of this Group, Royal Orchid Hotels Ltd., is going down consistently over the last 4 years and now it has plunged into the red with Total Income becoming nearly half at merely ₹.53.4 Crores and loss after tax at ₹.34.55 Crores as per supra para. It is wrong and denied that the petitioner has capacity and capability to deliver end to end solutions starting from design conceptualization to viably manage hotels and resorts. The respondent paid ₹.5,90,000 for signing an technical fee as per the management Terms sheet, but the petitioner neither signed the Technical Services and pre Opening Agreement nor it offered any technical assistance, guidance or support, whosoever. The respondent property was re-branded as REGENTA RESORT PUSHKAR FORT and the petitioner Non performance and other dubious and illegal modus operandi cause huge losses and made the Schedule property unviable and debt ridden. The Principal Officer/managing Director of the company ROAHPL is Mr.Amlan Kumar Dasgupta Din 0643616, and strangely, the petitioner is represented in these proceedings by one Mr.Amith Jaiswal, who is neither a Director nor key Management Staff as per the Annual returns filed by the petitioner company with ROC.

52. The averment made para 5, ‘ it is owner of immovable property situated at Motisar Road,Near meal Ground, Pushkar Rajastan who was desirous of building, furnishing and equipping a modern start hotel of approx. 58 rooms on the aforesaid property, the respondent being aware that the petitioner has the requisite knowledge, expertise and market experience for building and operating such a hotel approached the petitioner not to seek guidance on building the hotel and subsequently operate and manage the hotel which was proposed to be constructed on the property under the brand name of Royal Orchid Hotel’s is totally denied as false and incorrect. The true facts are that the respondent has constructed Hotel Pushkar Fort consisting of 58 rooms with other infra and amenities since 2006. Certificate of Registration under Section 12 of Rajastan tax on Luxuries (In Hotels and lodging Houses Act) 1990 vide from LTH2 dated 18.09.2006 and Registration under Form 5 under Rajastan Investment Promotion Scheme 2003 vide Regn No.284(A) Dated 16.02.2006 are attached. Contrarily, it was the petitioner who repeatedly followed up, assured and committed to the respondent to scale up the hotel to a higher level of performance by improving Turnover, profitability, occupancy levels and average rate realizations. In this pursuit,

the Executive Director of the petitioner company, Mr.Pushpinder Kumar, personally visited Pushkar and met the respondent and then sent the e-mail dated 24.04.2017, The petitioner asked the respondent to build additional 14 rooms by taking term loan and assured that the loan will be paid back in short span of time from internally generated profits. The petitioner requested that the hotel be refurbished and spruced up and re-branded. The respondent, in good faith and based on its representations, believed the petitioner, took term loan of ₹.2.5 Crores from AU Small Finance Bank Ltd., incurred additional ₹.78 lakhs from his own resources and spent total of ₹.3.28 Crores approx, The respondent who had established the hotel with 58 keys, constructed 14 more rooms and scaled up the inventory to 72 rooms, while the hotel remained in operation throughout without even a single day's interruption, whatsoever. The respondent also complied with various renovation and refurbishing works list as pre requisites for the rebranding of the Hotel as Regenta Resort Pushker Fort. The list of these works along with 14 additional rooms costed the respondent ₹.3,28,54,607/-.

53. The petitioner after checking and approving of all the works having been completed to its satisfaction signed a Hotel Operations Agreement dated 17.11.2017. This agreement was signed on Government of Karnataka e-stamp paper of value of

₹.200/- bearing number In-KA33561844314540P purchased by the petitioner ROAHPL which is a matter of record. But signatory to this agreement, who also was signatory to the Management Terms Sheet, now signed as Authorised Signatory under the Seal of Royal Orchid Hotels Ltd., a different legal entity, CIN L55101K1986PLC007392. After signing the Hotel Operations agreement dated 17.11.2017, petitioner deployed its General Manager and stationed him at the schedule property and resumed under the Brand Regenta Resort Pushkar Fort.

54. That contents of para 7 are wrong and denied. The petitioner has used jargon of various terms which is bereft of the context, precision and meaning which underscores the ignorance of the techno-managerial acumen pretended to be possessed by the petitioner. The petitioner has falsely without any specifics claimed to have extended Technical skills: expertise: provided professional advice on architecture, engineering, interior design, furnishing and equipping of the Hotel; advising on technical inputs, detailing and designing inputs, provided technical expertise and know how to operate and manage Hotel of this caliber, ensuring the hotel meets the standards of modern, luxury hotel of international standards. For a green field hotel, there is need for architecture, structural and MEP design, In the schedule property, the Building

consisting of 58 rooms was already operational as an established enterprise for over a decade since 2006. The respondent built additional 14 more rooms as per the same architecture and constructional details as heretofore existed, MEP Services already existed so only capacities were enhanced to cater to additional inventory where needed. The traditional Rajasthani Vibrant and colorful interiors and furniture etched in the history already existed on the hotel built by the respondent and he extended the same to the additional rooms as well. Hence, the petitioner's averments are absolutely concocted, distorted and mischievous to mislead the process of justice. The petitioner has woven web of lies by stating that it deputed several resources from its end, at its own cost and expense, has deputed various teams, invested large sums of money in this exercise, expanded enormous efforts and vast sums of money etc., such sweeping remarks and claims devoid of any tangible, corroborated and verifiable submissions are mischievous, misleading and malafide. These are outright blatant lies. The petitioner cheated the respondent by collecting ₹.5,90,000 for signing and technical fees and neither signed technical and pre operations services agreement nor deputed any team/person/resource for the same. In addition, the afore mentioned fee collected by the petitioner, there was a provision in the Management Terms Sheet and Hotel

Operations Contract for respondent to pay for remuneration, accommodation, food, daily allowance etc for the expert professional but even then no expert teams/personnel were deputed to the schedule property much less at its own expense.

55. That the contents of para 8 is completely wrong and denied. The petitioner is a Hotel Management company by its own claims involving room sales, food and beverages, catering, events management, leisure and hospitality etc., It has falsely stated that petitioner’s technical inputs are one of the fundamental feature. The technical inputs mean involving or needing special skills or knowledge especially in science and engineering for the design and building of machines, equipment buildings and structures. The petitioner is not a technical or engineering firm. Moreover, Construction of building/s involves Master Plan, Architectural Design, Structural Design and Drawings, MEP Design and Drawings, Good for Construction Drawings, Civil Construction and Project Management. All of these had already been completed by the respondent since 2006 when he had built the schedule property consisting of 58 rooms. Further, respondent is a professional in the field of Hotel Management and catering with over two decades of hands on experience and has managed his hotel profitably creating excellent image and

branch for which it has been awarded by RCI and Trip Advisor apriori to the Hotel Operations Agreement dated 17.11.2017. The fact is that, The petitioner, who is the appointed agent of the respondent vide Hotel Operations Agreement, has not demonstrated its professed skills, knowledge and performance; the operations and management by the petitioner has turned out to complete disaster and brought down the established Hotel Pushakr Fort to a brink of collapse by complete non performance, illegal diversion of funds from the OTAs without consent of the owner, fake and wrong billing, non compliance, Lack of Sops, Hiring manpower with criminal bent of mind and with political affiliations without proper due diligence, thus, making the yielding asset as loss making and debt ridden unit.

56. That the contents of para 9 of the application, regarding the basic management fee and Incentive management fee being linked to the revenue and gross profit is matter of record as per the Management Terms Sheet dated 16.06.2017 and Hotel Operations Agreement dated 17.11.2017. The Agreement provided for management fee as per Article XII subject to Article XIII(a) which provided for payments to the owner and priority of payment which clearly articulated-First to pay for Operating Expenses and then other payments including the Basic Management Fee/incentive

Management fee. Petitioner got the ready made asset which has been in existence for over 11 years since 2006 without disruption. The schedule property has been profitable and viable business entity with established clientele and goodwill. It had an established and strong business relationship with Travel and Booking agents, OTAs, Travel Companies, Business houses and other clientele. It has been a destination for the events and weddings because Pushkar is very religious and historical destination and it attracts tourists from India and abroad. By taking over the Operations management of the Hotel Pushkar Fort, the petitioner got ready made recurring and consistent turnover from the existing clientele, on which it earned basic management fee and incentive management fee without any efforts. But the petitioner was appointed as an agent of the respondent, who is the sole and absolute owner, to ensure higher occupancy levels, increase average room rates and improve profitability. While the petitioner’s fee was driven entirely on the performance against its own projections was just 35% in 2018-19 and it further plummeted in subsequent period and it pushed the schedule property into abyss of financial mess and mounting debt. In 2018-2019 the budgeted projections vs Actual Turnover was ₹.8.31 Crores Vs ₹.3.02 Crores respectively i.e, the petitioners performance was dismal at 36% of the approved budget. The budget itself was low as it reckoned lower capacity utilization. There is annual capacity of 70x30x12-25200 rooms where as the budget was based on 15163 rooms i.e., at 60% of the capacity levels at ARR of ₹.3492. Hence, at 100% capacity the incremental Turnover would be ₹.3.88 Crores and hence property has a potential generating turnover of ₹.12.169 Crores per year. Hence, Actual performance of the petitioner is just 25% of hotel capacity.

57. That the contents of para 10 pertains to Article II which stipulates the terms for operator and Operations of the Hotel and is a matter of record. However, the petitioner has failed to comply with the stipulated terms therein during the tenure of Hotel Operations Agreement since inception which include but are not limited to the following aspects. Article II(1) Operator did not comply with its undertaking to discharge and perform efficiently with due diligence various obligations. The petitioner failed to work as an Agent of the Owner. Article II(2) mandated the petitioner as Hotel Management Expert, the Management and Supervision of the operation which it failed to comply and execute in professional and process driven manner Article II(2.1) The Pre-opening services prior to opening the petitioner neither signed the Technical Services and pre opening agreement nor it offered any technical assistance, guidance or support, whatsoever. The signing and technical fee, paid by the owner/respondent for the pre

opening services, amounting to ₹.5,90,000 was usurped by it without any deliverable. Article II(2.2) Recruitment, Appointment, Transfers, Training, Assignment of duties of personnel. The petitioner did not have any HR Policies and SOPs for manpower. It did not plan and execute an organogram of the organization clearly defining job specifications, key result areas, reporting relationship, process of performance appraisal and rewards and punishments. It could not even deploy General Manger, the key person to lead and manage the hotel, who was the only staff on the rolls of the petitioner and rest of all the staff was on the rolls of respondent/owner. The GM salary was being reimbursed by the respondent/owner to the petitioner as GM was the point of interface between the respondent and petitioner. Out of approx 48 months, for 17 months intermittently no GM was deployed and for the remaining period three GMs changed jobs that resulted in lack of continuity and controls and it further pushed down already plummeting performance. One of the GM Chandan Choudhury was based at the hotel for three months, after moving to Jaipur started visiting to the Hotel without any operational and managerial protocol. He was initially recommended and deployed at the Hotel on recommendation by the Executive Director, Pushpinder Kumar vide his email dated 09.08.2017 referring approval by Mr.Baljee, who is a minority shareholder in the loss making holding company.

Obviously, petitioner is an unprofessional company run by group of close knit people without well laid out processes, procedure and decision making process. This Mr.Chandan Choudhury Ex.GM of the property recruited Vinod Kumar Yaduvanshi vide his email dated 03.07.2018. The petitioner also charged the recruitment fee from the owner respondent owner vide petitioner invoice for recruitment services through Nuakri Portal vide invoice 034 dtd.15.09.2018 Amount ₹.10061. This Vinod Kumar Yaduvanshi had a criminal bent of mind and defrauded a customer Asha AND Gulab Maheshwari BY STEALING ₹.2,00,000/- from the hotel and now this staff is absconding; The police complaint has been lodged at the Police Station Pushkar dated 26.07.2021 and petitioner is still not able to resolve the matter Pradeep Jodha was attending political rallies and campaigns while employees at and paid for by the Hotel in complete dereliction of duties. Article II (2.3) fixing of emoluments of all personnel. The manpower in commensurate with volume of hotel operations was not done by the petitioner resulting in huge bill for permanent and casual staff. When its performance was at 25% of capacity of the hotel, it deployed staff as if the hotel was operating at full capacity resulting in increase in cost of operations. The employee cost which stood at ₹.7,94,816/- in March 2018 has now been brought down by the respondent to ₹.4,70,549/- in March 2021 by effective cost cutting measures. Article II (2.4)

Formulation and administration of all personnel policies in local laws and regulations. The petitioner did not comply with the regulations and compliance resulting in notices and penalties from Government Parastatals U/sec.40 r/w Section 39 of ESI Act 1948 and under Section 14B of PEPF and Misc.Act.1952. Article II(2.5) petitioner breached the term as it did not institute and supervise operating policies and reporting and control systems and other procedures for all departments of the organization. Article II (2.6) the petitioner did not fix policies regarding prices, tariffs and rates, use of room for commercial and complimentary purposes in consonance with budgets. It did not discuss and seek approvals of the Owner at any stage. Article II (2.7) the petitioner did not evolve and execute any policies for determining the terms and conditions for leases, licenses and concessions. Article II (2.8) the petitioner did not formally appoint any contractor, agents and consultants necessary for achievement of the budgets. Article II (2.9) the petitioner did not discuss and seek approval of the Annual budgets and present to the owner in the dark and alienated him from his own asset. The petitioner without policy and guidelines was randomly and adhoc basis giving discounts and complimentary rooms. Article II (2.11) the petitioner disrupted cash flows by diverting and retaining collections from OTAs thus choking operational supplies and consumables and hotel could not pay for other operating expenses. The maintenance of the building, furniture, equipment also was not done properly by the petitioner and these have deteriorated since the start of hotel operations agreement and no audit/inspection in this regard has been done and submitted to the owner Article II (2.12) the petitioner did not carry out preventive maintenance schedules Article II(2.13) The petitioner did not plan, prepare and execute sales and promotional plans and thus performance has been below 25% level in relating to the capacity of the hotel/budget. Article II (2.14) The petitioner did not carry out operations and management of the hotel in diligent and proper manner. Article (2.15) the petitioner did not take care of the legal issues that cropped due to its non performance. The fraud case of Vinod Kumar Yaduvanshi is still under police investigation and Sunil Joseph FIR 141/2018 also has not been addressed by the petitioner. This has dented brand and image of the Hotel Pushkar Fort. Article II (20.16) the petitioner has failed to hire lawyers to address legal matters and also not appointed auditors to check frauds and misappropriations as it surfaced in case of Vinod Supra. The petitioner has breached terms of Article II (2.1 through 2.16) as above. The petitioner willfully alienated and disobeyed the owner/respondent and illegally and forcibly adopted modus operandi which has been detrimental to the hotel. The petitioner did not discharge and perform efficiently and with due diligence the responsibilities as per Article II. The owner authorized and engaged the operator as an agent of the owner, but the operators conduct ad modus operandi was so dubious and malafide that it bypassed the owner completely and behaved as if it was the owner itself. The petitioner did not provide any standard policies and procedures f the group to the owner. Neither any changes/updation in the group policies were intimated nor any specific procedure/policy that needed to be adopted by the hotel discussed and adopted in consultation with the owner as stipulated in the subject article. The petitioner shunned the owner completely and usurped all and absolute authority unilaterally.

58. That contents of para 11 are vague and rhetoric by the petitioner that has already been addressed. It is wrong and denied that the petitioner set up the hotel. It was already operational since 2006 with 58 keys and 14 more rooms were added by the owner in line with existing design and architecture for consistency, continuity and integration to the property. Article VIII with regard to advertising and sales promotion is a matter of record in the hotel operations agreement. The petitioner merely took over the pre existing network of sales channels, trading channels, travel/booking agents, travel portals and OTAs that the respondent/owner had painstakingly built over a decade since 2006. The petitioner

did not add any new sales channels and failed to generate any incremental business through is regional sales offices as was promised. It is in this context the owner sent a mail dated 25.04.2018 to the petitioner's authorized signatory of the hotel operations agreement that “Hotel occupancy is too low and sale team is not picking up the momentum, please take a serious note on this issue and update all the regional sales offices to promote Pushkar unit..” Several mails were further sent expressing concern of low sales, accruing losses, mounting debt burden and financial crisis. These include mail 24.07.2018, 23.08.2018, 28.08.2018, 02.09.2019, 07.08.2019 and 24.09.2020 which mails are produced. The petitioner has admitted that it actively identified, trained and recruited the staff. The petitioner did not perform its duties meticulously with proper due diligence. It recruited a staff in accounts, Mr.Vinod Kumar Yaduvanshi, who turned out to be criminal. He collected advance from customer, Asha and Gula Maheshwari, instead of depositing in the hotel account usurped the same and is absconding. The petitioner has taken no action against staff recruited and working under its management who has committed fraud and is absconding. No FIR has been filed by the petitioner. The customer has been following up with the Hotel for refund and the petitioner has been dodging the issue and letting it languish unresolved, tarnishing the image and eroding the brand value of the hotel built by the respondent/owner since 2006. The respondent/owner has now lodged a police complaint against the staff on 26.09.2021 who was recruited by the petitioner as per document No.18 above enclosing details of fraud committed by Vinod for ₹.2,00,000/- fake cash voucher copies and the customer Asha and Gulab Maheshwari communications being dodged by the petitioner in supra paras. Yet there is another instance of customer Mr.Sunial Joseph, who has field criminal complaint of cognizable offence against the Director, VP Sales (Mr.Ankit Mathur), Adi Ansari (Sales Manager) all from Regenta and Royal Orchid Hotels Ahmedabad U/sec.420, 406, 500 and 120B vide FIR 0141 dated 01.08.2018 at P.S.Kowali District, Ajmer. The petitioner's Ahmedabad office completely mismanaged the booking of 100 plus guests and did not act expeditiously when customer clearly intimated to either assign 50 rooms to 100 guests or refund the advance. These staff of the petitioner was also served legal notices in their individual names on 30.01.20018 but they neither responded nor resolved the dispute. Such attitude of indifference and apathy to customer has resulted in serious legal dispute as customer U/Sec.156(3) obtained court order registering the above mentioned FIR. In this FIR, the owner/respondent also has got implicated while the management and operations of the hotel have been under the purview of the petitioner at the relevant time. This is a complete incompetence, indifference and non performance of the petitioner. As petitioner is not performing and has breached various terms of Hotel Operations Agreement dated 17.11.2017, the owner/respondent is taking appropriate actions that are critical for saving his asset. The owner does not have to interfere with the day to day operations of the petitioner, he has formally served Forthwith Termination Notice on account of Article XXV(2a). Breach of Terms of Agreement Article XXVI(2b) Material adverse effect caused by the petitioner arising out of non performance, illegal and dubious modus operandi of diversion/retention of funds from OTA’s, Non compliance, frauds by its staff etc.,

59. That contents as per para 12 are wrong and denied that respondent has attempted to interfere in the day to day matters of the hotel. The respondent is sole and absolute owner of the hotel and he with his family members in the schedule property and has hired the services of an agent/the petitioner herein through hotel operations agreement dated 17.11.2017. The sub points (I) through (viii) are bereft of facts and concocted versions f the petitioner which are made only to mislead the process of justice. Article V refers to responsibility and authority of the owner and operator and Mutual Covenants. As per Article V(2) the General Manager will be the employee of the petitioner/operator whose salary and other perks shall be paid by the owner by 7th of the following Month.

The petitioner failed to even position a General Manager at the Hotel throughout the period since inception of the agreement. Out of nearly 48 months so far. The General Manager was not deployed for a period of 17 months and during the remaining period three General Managers were changed. Therefore property has either remained without the leader of the petitioner at the hotel or high attrition has resulted in discontinuity and disruptions adversely impacting the management of hotel as per supra paras. As per Article V(6) The litigation related to the operations of the hotel shall be instituted and defended by the operator/petitioner. The litigation/dispute/police complaint in case of Asha and Gulab Maheshwari arising from Fraud/theft of ₹.2,00,000/- by Vinod Kumar Yaduvanshi, the staff recruited by the petitioner and Mismanagement of the booking of Mr.Sunil Joseph resulting in FIR 141 dated.01.08.2018 are instances of gross and willful negligence, dereliction of duties and non performance of the petitioner. Article V(8) and V(9) which are matter of record. It is wrong and denied that terms of operations without let or hindrance have not been adhered to, there has been unwarranted interference by the respondent. Indeed the performance and productivity has gone down since inception of the Hotel Operations Agreement due to non performance of the petitioner; incompetence; No process driven policies and SOPs and lack of concerted efforts to enhance business. In the

Hotel Operations Agreement dated 17.11.2017, schedule 3 refers to Brand standards of the Operator. Hence it is breach of Article VIII related to advertising and sales promotion covenant. The attached picture of the sing board indicates the shoddy display of signboards of the hotel by th petitioner. The schedule 2 of the agreement refer to (I) Description of the Hotel (ii) Facilities of the Hotel (iii) Furniture and Fixtures. The petitioner has deliberately left it blank so that he is not held liable under Article XVIII pertaining to routine repairs and maintenance of the Hotel and its facilities by the petitioner and Article XVII to create reserve for replacement of furniture and equipment. This is breach of Agreement against the Owner/respondent interest and assets. Article V(9) emphasizes that operator shall disclose all information, without withholding any details regarding the operations of the Hotel as and when the owner may request the operator to provide. The petitioner has unilaterally without consent and disclosure to the owner illegally and fraudulently collected customers payments for bookings of the Hotel from OTAs viz Make My Trip and Go Ibobo into its account. The petitioner has contravened Article XXIII pertaining to consent. Prior to signing of the Hotel Operations Agreement, these payments were always credited to the Hotel Account directly. The petitioner created this dubious and malafide modus operandi rerouting the flow of customer payments through its own account to siphon money of the hotel and use these funds for its own use. This led to disruption of cash flows and seriously upset the working capital management. This is in contravention to Article VII(2) pertaining to working capital; the petitioner willfully caused the obstructions in availability of sufficient working capital. The petitioner further unilaterally enhanced discounts and commissions to benefit itself and reduced the Average Room Rates (ARR) below the budget levels thus reducing profitability of the hotel for its personal gains. Since the start of the Hotel Operations Agreement dated 17.11.2017 till 31.07.2021 sum of ₹.25,64,803 from Go Ibobo and ₹.38,94,930 from Make My Trip adding to Total of ₹.64,59,734 has diverted and retained by the petitioner illegally and forcibly. The petitioner/the Agent of the respondent/sole and absolute owner, has not disclosed to the latter the agreement/arrangement that the petitioner has made with the OTAs completely keeping the respondent/owner in the dark and alienated him from the cash flow of which the Hotel is the Beneficiary. This amount is due from the petitioner with interest @ 2% per month from the value date it has been collected by the petitioner on respondent/owner behalf. As per the email dated 14.09.2017 the petitioner intimated the unilateral and illegal modus operandi to collect the hotel money into single bank account and self declared as nodal agency. The respondent objected and sought clarifications via email dated 18.09.2017 with regard to Tariffs, Discounts and GST input credit and output liabilities, TCS and TDS accounting etc., Incidentally, this dubious modus operandi of diverting/retaining the respondent cash flows into the petitioner account without disclosure and his consent is contravention of the agreement and unlawful. It is defiance of owner and agent relationship by the petitioner. As per the Article VI (b) of the agreement wherein operator shall not pledge the credit of the owner; nor shall the operator in the name of or behalf of owner borrow any money. The petitioner has clearly breached the terms of agreement. This unlawful unilateral diversion/retention of the flow of funds disrupted the cash flows of the respondent and thus made it difficult for it to meet commitments to other stake holders like EMIs of term loan of INR 2.5 Crores, payments of staff salaries, supply chain payments and other financial commitments of the hotel. Hence, the petitioner withdrew its General manager from the hotel as he could not have managed the hotel without funds and then started blaming that respondent/owner is attempting to interfere in the operations. The respondent/owner lives with his family at the scheduled property since 2006 and he has to face the people who have demands of payments and other issues related the property. The reckless defiance of petitioner did not take into consideration the stringent and streamlines Tax regime of the country. Its own GM-Accounts warned and cautions the petitioner that if the units did not account properly there will be big disconnect in GST Regime. The various owners of the hotels managed by the petitioner severally wrote to the chairman/Managing Director of the Royal Orchid Group of Hotels, Mr.Chandre K Baljee their concerns regarding OTAs third party bookings process, non disclosure and no consent of the owners to diverting/retaining the collections at ROAHPL Account, Lack of SOPs, Non existence of policies, No guidelines for complimentary rooms and discounts and wrong accounting practices. This is in contravention to Article XXIII related to consent which has not been obtained by the petitioner from the respondent. IT can be observed that the mastermind of this unlawful pedagogy of rerouting, siphoning and retaining money of the respondent is one Mr.Amit Jaiswal, who is neither the Director nor the key management personnel in the petitioner company. He is the CFO of Royal Orchid Hotels Ltd., which is the shareholder I AB Holdings Ltd., A company with the negative net worth of INR-1.4 Crores, which in turn is the holding company of the petitioner/ROAHPL which also is debt ridden with unsecured loan of INR 8.73 Crores. Royal Orchid Hotels Ltd., also has recorded loss of INR 35.44 Crores in the year ending 31.3.2021. The petitioner company, its holding companies are loss making operations, cash strapped and debt ridden. The petitioner has absolutely failed in its performance. Hence, respondent realizing that he was at grave risk, intimated to the petitioner to terminate the contract by 31st August 2019. Instead of terminating the contract by mutual consent, the petitioner again resorted to concocting facts and misusing process of law by filing writ petitions in high court, obtaining orders for exparte judgment within three days on the commercial Arbitration application No.187/2019 u/sec.9 of AA Act, 1996 resulting in Temporary Injunction against termination notice, which is the matter on hand.

60. That contents of para 12(ii) are wrong and denied. None of this email is written by the owner himself. There is exchange of communications between Chandan Chaudhury who was the GM in the hotel for first 3 months followed by his successor Lokendra Singh. There was no approved organogram, reporting relationship and communication protocol. Referred documents are dated 26.03.2019 and 03.05.2019 which clearly indicate that petitioner had not performed for the year 2017-18 and 2018-19. Therefore, owner, had instructed the GM to circulate the occupancy levels to all the regional sales offices of the petitioner so that they all know that occupancy levels were below 25% of capacity and hotel was making huge loses and become debt ridden due to the non performance of the petitioner and he was seeking support of regional sales offices for increasing bookings. This

is corroborated by petitioner’s attached email dated 26.03.2019. Attached petitioner email dated 2.5.2019, confirms that the petitioner had not even finalized the budget for the FY 2019-20 for 11 hotels under its management. It implies that the petitioner had no corporate governance, budgeting MIS and control systems. The performance is measured against the budget, thus by delaying this process, it caused huge problems for the respondent. This is in contravention to Article VI(d 1,2,3) where the petitioner is to submit not later than 30 days prior to start of the fiscal year projected revenue, expenses, expenditure and capital expenditure.

61. That contents of para 12(iii) are wrong and denied. The respondent is sole and absolute owner of the property and he hired the services of the Agent, petitioner to manage and enhance growth and profitability. The petitioner completely failed in its performance. The hotel had capacity of 70x30=2100 rooms per month i.e., 25,200 room per year. In contrast, the petitioner only booked 7110 room in the Fiscal year 2018-19 i.e., 28% occupancy levels, created huge pressures for the survival of the hotel. The owner through his own contracts and networks started making efforts to garner business. The clients can pay to the hotel in cheques/DDs/credit card/debit cards/net banking/ cash etc.,

The owner has deposited all the collections, referred in the petitioner document No. 6 pg 79 of the plea, to the hotel account and reckoned in sales and management fee thereon has also been reckoned in accounts and duly reconciled. Further, the hotel was under the management of petitioner and its GM, Lokendra Singh, was stationed at the property and overseeing all departments including accounts and finance which and installed integrated software and all check-ins and check-outs were being monitored on daily basis room wise by him and his team. To indict the owner, the hand that was feeding the agent/the petitioner, is clear reflection of criminal bent of mind and myopic view of the petitioner.

62. That contents of para 12(iv) enclosing documents 7,8,9 series averred by the petitioner related to hindrance in providing information for preparing the budget of 2019-20 is wrong and denied. The management is lead by the petitioner and its GM is based on the property. So delay or failure to provide date to its head office is failure of processes and record keeping by the petitioner. Owner is in no way responsible for the same. Thread of series of communications is a routine matter which clearly establishes that information was provided and the petitioner is just enclosing redundant and rhetorical papers which has no substance and is only a ploy to mislead the process of justice and waste the precious

time of the Hon'ble Court and divert the attention from its utter failure an pathetic performance causing a huge loss to the owner, making established business unviable and debt ridden and eroding its valuation and net worth. The Article XVI books and accounts and records and statement stipulate that (1) operator shall keep full and adequate books of accounts and other records reflecting the results of the Hotel. (2) The operator/The petitioner shall deliver to the owner at the end of each calendar month, a profit and loss account showing the results of the operations of the hotel, for the immediate preceding calendar month and the fiscal year to date. The petitioner has kept the owner in the complete dark. It neither prepared and discussed the budget with the owner nor submitted monthly profit and loss account and explained variances. It had no face to show to the owner in view of its dismal performance which was below 24% of its own projections given to the owner/respondent. It was remote controlling the management of the property as it did not even have its GM at the property for 17 months out of 48 months. But the petitioner was squeezing major funds flows of the respondent by illegally diverting/retaining payments for OTAs to its account and breaching the Article XIII(a) where in first priority to pay from the funds was to pay all operating expenses other than the ones payable to operator. The petitioner shackles and constrained operational freedom of the respondent and rendered him helpless and victim of its ploys, manipulations and criminal acts.

63. That the averment at para 12(v), In terms of Article II sub 2.10 enclosing document no.10, petitioner right has been infringed is wrong and denied because the petitioner has completely missed out the prerequisite to exercise its authority in granting discounts and complimentary rooms or stays, is the undertaking by the operator that it shall discharge and perform efficiently with due diligence which has not been done in subject instance. The petitioner has exclusive but subjective right of grant discounts and complimentary rooms or stays to customers. The hotel solely owned and built by the respondent has to function as professionally managed business entity with the well articulated SOPS, policies and guidelines and within budgeted parameters which operator did not provide. Operator does not have unlimited and unbound authority to misuse the property which is inimical and detrimental to the business growth and profitability. As per Article V(10) The operator shall make available or cause its affiliates to make available group services such as loyalty programmer, dining programmers and such others as operator may institute from time to time which it never did and tried to misuse the property of the owner by promoting their vested interests. Vermigo has given total business of ₹.11,000/- and

operator wanted to do personal favors by granting complementary rooms for two nights cost of which would be in excess of the total business generated causing loss to the hotel. The owner had discussed this matter with Mr.Pushpinder Singh, the Executive Director of ROAHPL and both had agreed to disallow as it was the personal holiday trip and not Hotel Familiarization trip of 2 nights, hence not allowed.

64. That the terms of the Article V(3) referred enclosing Minutes of the meeting dated 12.03.2019 as document no.11 and email dated 24.07.2019 as document No.12 are a poor reflection of the style of operations of the petitioner. Mr.Chander K Baljee who conducted this meeting, is a minority shareholder with 2% equity of fact value of INR 1,00,000 only in AB Holding Pvt., Ltd., with negative net worth of INR-1.41 Crores which is the holding company of the petitioner ROAHPL; and the Secretary preparing the minutes of meeting is the corporate-GM Chandan Chaudhury; This meeting is conducted not on the property but by calling the owner of the hotel to a different location viz Jaipur. Both the referred individuals have no locus standi to conduct such a meeting and it is further audacious for the agent to call its owner to discuss business in different place other than at the scheduled property unless agreed by the owner willingly. The petitioner has no brand standards as can be observed that page No.39 Schedule 3 of

the Hotel operations Agreement dated 17.11.2017 is blank reflecting nullity of any brand SOPs executed by the petitioner which is in again breach of Hotel Operations Agreement. The owner has discharges his duty by investing over INR 3.28 Crores supra para by the time of opening date in compliance to Article IV when operator and the owner has mutually consented on the opening date. The ongoing issues listed related to amenities and infra are under the purview of the GM employee of the petitioner, who has been operating and managing the property. Deterioration of the property in any manner, whatsoever, is due to lack of technical competence of the petitioner as is evident from the minutes of the meeting. In order to save the assets from further deterioration and due to dismissal performance of the petitioner, the termination notice was served to forthwith terminate the contract by 31.08.2019. It is wrong and denied that respondent has defaulted in payment of the basic management fee and incentive management fee to the petitioner to the extent of INR 3,40,498/- in breach of Article XII. No statement has been submitted with details and basis on which this amount has been claimed. The detailed statement is requested from the petitioner mentioning the ROAHPL invoices credit notes for having collected money from OTAs on behalf of the hotel, GST, TCS and TDS payments into government portals; Agreement signed between OTAs and ROAHPL etc., However, as per the document supra INR 64,59,734 have been collected from OTAs by the petitioner on behalf of the hotel by illegal diversion/retention in to its account without disclosure and without consent of the owner on which the interest @ 2% per month will be recovered as stipulated in Article XII(4) which reciprocally applies to the petitioner. IT is clear that there has been no protocol and no well defined process of visits to the property. Nonetheless, the documents corroborates the concerns of the owner which include dismal performance, huge creditors outstanding and abnormally high cost of operation which has lead to gaping losses and mounting debt. The point 12 (viii) is wrong and denied and the petitioner has caused complete financial indiscipline as explained in paras above.

65. That contents of the para 13 enclosing email dated 7.8.2019 emphasize that Hotel Pushkar Fort under the Hotel Operations Agreement has been making losses for a long time, there was no business improvement even after period of 21 months from Nov 2017 to August 2019 and the respondent expressed being on the brink of collapse of the business. He expressed that there were no sufficient funds to run the operations and to clear the market outstanding and expressed that he has decided to move on his own and agreed to wind up the Hotels Operations Agreement by 31.08.2019. He further

amicably expressed that the petitioner will understand the precarious situations and takes a wise decision to discontinue this contract, but the petitioner chose to flex its muscles by misusing the court process by temporary injunction in view of the lock in period of 4 years. The petitioner with malafide intentions suppressed material and substantive facts of its dismal performance, illegal diversion/retention of funds, failure to generate enough profitability to pay EMIs of the Term loan of INR 2.5 Crores to which the petitioner was a party in giving financial projections and viability to pay back the loan, but defaulting completely and absolutely. The petitioner is aware that Owner/respondent has mortgaged the hotel and informed the petitioner of the same.

66. The petitioner has breached the hotel operations agreement, as per Article VI. The petitioner has breached Clause VI(a) neither submitted any business plan in any financial year nor has delivered to the owner prior to the end of the 20th day of the each month, a profit and loss statement showing the results of the operation of the hotel for the preceding calendar month and the year to date. The petitioner has failed to comply with in 90 days after the end of the fiscal year to deliver to the owner a profit and loss statement showing the results of the operations of the hotel and payment due to the owner and operator of the Fiscal year. The

petitioner has also breached clause VI(b) by diverting, siphoning and retaining INR 64,59,734/- as on 30.09.2021 which are to the credit of Owner. The petitioner has breached VI(d) by neither preparing nor submitting to the owner, not later than 30 days before the commencement of each fiscal year the forecasts detailing projected revenues and expenses of the hotel, expenditure and capital expenditure.

67. That the Article XXIV (3) states that the first four years of the terms of contract starting from the effective date shall be considered as a lock-in period. During the terms of contract starting from the effective date the owner shall not be entitled to terminate the contract under any circumstances except in case of hotel as specified under Article XX. The termination was based on Forthwith Termination as per Article XXV(2a) and XXV(2b)prior to completion of lock-in period of 4 years. The material and substantive facts were hidden by the petitioner from the Hon'ble Court. The petitioner deliberately did not include the address for the purposes of the Notice in Article XXX knowing very well that the respondent/owner has been living with his family on the schedule property. It instead forwarded the notice to respondent's ancestral address so that it does not reach the respondent promptly and then it was pressing for exparte orders except for Hon'ble Court intervention insisting to ensure that notice must reaches the

respondent which is clear from the Hon'ble Court proceedings. With efflux of time the lock in period is now lapsing on 16th November 2021 when the termination will come into full force and the grounds on which temporary injunction was granted will cease to exist giving way to termination of the Hotel Operations Agreement.

68. That Article XXV stipulates that in the one or more of the events or defaults agreement can be terminated forthwith. Article XXV (2a) Breach of obligations by the parties and Article XXX(2b) termination in case of material adverse effect. Article XXV(2c) Insolvency of parties. The various instances in the supra paras amply demonstrate that petitioner has failed in performance and breached obligations under the contract. It has caused material adverse effect by compelling the owner to build 14 additional rooms by taking term loan of INR 2.5 Crores. These rooms were not required because the petitioner budget only reckoned 15163 rooms occupancy per year which worked out to be only 42 rooms per day. AS there were already 58 existing rooms, it was wasteful and redundant expenditure proposed and executed by the petitioner by giving false and concocted financial projections to the Au Small Finance Bank Ltd., The Supra Annexure 11 of term loan of INR 2.5 Crore makes it clear that draw down on this loan of INR 2.5 Crores was based on the Projections given by the petitioner to

the bank. It did not even budget for enhanced inventory of 72 rooms much less achieve the same. Its actual occupancy levels were approx 24% of the installed capacity of rooms (i.e, on an average 17 rooms per day only). Further, the petitioners Holding Company AB Holdings Pvt., Ltd., is bankrupt and insolvent with Negative net worth of INR 1.4 Crores and the petitioner ROAHPL also is existing on the Unsecured loan of INR 8.73 Crores as per documents 4 & 5 supra. Therefore on three grounds as above the Forthwith Termination is valid and applicable with immediate effect and in any case the termination after 4 years lock in period, that will also come in to complete the full effect after 16.11.2021.

69. That the contents of para 15 are wrong and denied as already elaborated. The provisions of the contract for termination have already been presented above. The agreement with the petitioner has already been terminated by 31.08.2019 as per forthwith termination terms. The petitioner has misused the provision of 4 years lock in period by hiding material and substantive facts which expose the petitioner’s non performance, criminal acts of frauds, siphoning/retention of the funds from OTAs and the breach of several terms as mentioned in the earlier paras. The lock in period is also expiring on 16th November 2021 when the termination shall come in to complete and full effect.

70. That the contents of para 16 were wrong and denied. The petitioner has no expertise in setting up and/or managing or operating the hotel. It has not provided any technical inputs as it is not construction/engineering Company and more over the building with 58 keys has existed since 2006. It has inducted people into the hotel without due diligence and recommended people to be recruited who have criminal bent of mind and political affiliations. Vinod Kumar Yaduvanshi has committed fraud of INR 2 lakhs in case of Asha and Gulab Maheshwari and absconded while police case has been registered against him. Pradeep Lodha, Ex GM has been absenting himself from the property and during duty hours participating in political rallies and campaigning for political candidates as stated supra paras.

71. The contents of 17 are wrong and denied and already responded to. The petitioner does not know that in hotel industry, it reflects ignorance to write as hotel of this caliber, meets the standards of modern luxury hotel of international standards. As stated before the petitioners comments and statements are rhetoric, vague and meaningless. These lack precision, context, tangible and measurable parameters.

72. That the contents of para 18 are wrong and denied. The respondent has amicably communicated to the petitioner his intention to terminate as he no longer can bear the huge losses and mounting debt. The dismal performance and illegal nefarious business conduct of the petitioner by diversion/retention of money from OTAs which is to the credit of the Owner, has brought the established business entity to grinding halt and endangered its existence. The termination will cause no loss to the petitioner but his criminal ploys and acts to drain out the resources of the owner in collusion with OTAs will certainly come to end. Termination will enable owner to come out of the agreement that is one sided and without any commitment and stake of the petitioner to ensure that the property moves along the trajectory of profitable growth. The petitioner has mischievously indemnified itself vide Article XXVII(2) against all loses, liabilities, damages, claims, costs and demand of any nature against the operator arising out of or in connection with this agreement. Under Article XXVII (4) under no event will petitioner be liable to owner/respondent more than one year management/incentive fee. The respondent is in his absolute right, within the context of the agreement, to terminate the services of his agent/the petitioner, which shall now come to full force with effect from 16.11.2021 and hold him liable for deliberate and willful cause of liabilities, losses and debt to the respondent/owner.

73. That the contents of para 19 are completely false and denied. Bookings referred in attached document from Kesari world and Veena Travels are not the efforts of the petitioner, these agents have had the agreement with hotel Pushkar Fort well before the Agreement was signed so the petitioners got these as ready made sales channels with no effort. The petitioner could not add any new sales booking agent and even booking through their own offices have been negligible. Respondent is not threatening but has formally communicated to terminate the contract. It is a matter of record that the petitioner has not only failed to perform but has caused huge losses to the hotel. The respondent is not suppressing any sales and that indictment is unfounded and blatant lie. More so, there is the integrated software along with hardware purchases and installed at the cost of over INR 15 lakhs under the supervision of GM, who is the employee of the petitioner. The petitioner is behaving like a bad workman who is quarreling with his tools as it has not expertise, no acumen and no professional management. It has trapped the owner and now putting obstacles by misuse of process of justice through temporary injunction and making it difficult for the owner to get released from its clutches. The petitioner’s claim that agreement does not stipulate a minimum percentage of sales is malafide averment and shows its criminal manipulative

intent and actions. The petitioner did not submit budget/financial projections for the FY 2019-20 and FY 2020-21, FY 2021-22, even based on previous year projections with total revenue of INR 12 Crores per year. The Actual Revenue in 2017-18 was INR 1.98 Crores 16.5% Achievement; in 2018-19 was INR 3.02 Crores 25% Achievement; in 2019-20 was 2.71 Crores. 22.5% Achievement and in 2020-21 was INR 0.91 Crores 7.5% Achievement respectively. This is a dismal and unacceptable performance by the petitioner. It is in this context that respondent has forthwith terminated the agreement. In case of the petitioner ROAHPL Vs Kesho Lal Goyal, Dehradun when the petitioner fell short by 15% in comparison to budget, it was declared non performance and the contract terminated. In present case the shortfall is more than 75% in all the 4 years which has destroyed the hotel valuation and net worth solely nefarious modus operandi of conducting business and incompetence among others. It is for this reason that itself indemnified itself against all losses, liabilities and debt.

74. That the contents of para 20 are wrong and denied. The petitioner is attaching an e-mail dated 26.08.2019 and averring something different than the content of the attached email such is the adhocism and malafide intent of the petitioner t9o mislead the court proceedings. The subject

email does not state that respondent requires a handover of the website and other documents by end of this month. It states that August 31, 2019 will be the last date for reporting daily DSR and after that none of the reports will be sent to any of the royal Orchid concerns. It is wrong and denied that after receiving the email dated 7.8.2019 that respondent held many talks to amicably resolve. The petitioner has misled the respondent that it will be withdrawing its Com.AA.187/2019 and sends the final accounts for closure of the contract. It then sent the draft consent terms without attaching final detailed accounts of closure with ROAHPL Invoices, Credit notes in the name of the Hotel for illegal diversion/retention of money from OTAs by ROAHPL; Agreement copies signed with OTAs without consent/disclosure; compliance of all transactions in GST/TCS/TDS etc., Statement of Net remittance of Taxes in the Government portals based on authentic and verifiable documents; settlement of legal disputes caused by it; details of credit notes for reservations done through petitioner Regional stales office and/or any other collections on behalf of the hotel along with interest @ 2% per month for the amounts retained by it; compensation to the owner/respondent for the willfully caused losses/liabilities and debt.

75. That content of para 21 are wrong and denied. The emails dated 7.8.2019 and 28.08.2019 were clear communications to the petitioner that the respondent as the sole and absolute owner wished to amicably terminate the services of its agent forthwith because of its non performance and illegal and dubious modus operandi. There is no irretrievable harm, irreparable injury, grave damage to the petitioner. The petitioner has made no investment; it has only illegally drained and criminally retained the funds from OTAs which are to the credit of owner. The petitioner has prolonged the operation agreement by temporary injunction till lock in period by suppressing material and substantive facts from this Hon'ble court so that it can continue to drain the funds flow from OTAs and other booking agents. There will be no situations where in it will have to cancel the bookings and expect potential lawsuits as it now knows that the respondent wants forthwith termination which should have come into effect as on 31.08.2019 but in any case not later than with effect from 16.11.2021 when Hotel Operations agreement will stand absolutely and completely terminated after expiry of the 4 years lock in period. No bookings, whatsoever, from and through the petitioner will be entertained by the Hotel Pushakar fort post 16.11.2021 and all signage and software etc., of the petitioner name and brand shall be dispensed with.

76. That content of para 22 are wrong and denied. The petitioner under Article VIII has done no advertising and sales promotion and it has not manifested in enhancement of any sales which is reflected in dismal and pathetic performance of the operator/the petitioner. The petitioner did not set up the hotel it has been in existence since 2006 with 58 keys, it did not market extensively and popularize it through trading channels, travel agents, travel portals and websites etc., the staff identified, recruited and trained by it turned out the criminals and people with political affiliations as stated para supra. Respondent is not taking over the hotel, he is the sole and absolute owner and terminating the services of his agent, the petitioner, for its non performance and illegal, dubious, criminal and nefarious acts of rerouting diverting siphoning and retaining money from OTAs which is to the credit of the respondent. All the OTAs have been dealing directly with Hotel and paying sales proceeds directly into the operational account of the hotel as per Document No.35.

77. That the contents of para 23 are imperative that after termination the petitioner will be have no role in the hotel whatsoever. The petitioner failed to operate and manage the hotel efficiently and smoothly. It caused it huge losses and made it debt ridden. It failed to garner any new business. It has no acumen and competence in hotel management. It has

been harrowing an traumatic experience to deal and work with the petitioner from whom owner is finally severing relationship and starting the process of plugging up the gaping holes of financial leakages created by it.

78. That the content of para 24 whereby the petitioner has sought the temporary injunction under the pretext of lock in period of 4 years has resulted in further hardship and losses to the respondent and the petitioner has continued to perpetrate the draining of funds from the OTAs through illegal means and criminal acts without consent of the owner and agent/the petitioner has unlawfully assumed the role of the owner. The agreement provided for the forthwith termination of the contract with maximum compensation of two years management fee based on the immediately preceding 12 months actual revenue, but the petitioner know that it too will have to pay one year compensation of management fee/incentive fee for breach of agreement and causing material adverse effect willfully and causing huge losses liabilities and debt to the respondent. Thus, it chose to prolong the agreement knowingly that it was unable to perform but wanted the process of siphoning of funds from OTAs to continue. This has caused irreparable harm and injury to the respondent and made him default with banks and other creditors.

79. The contents of para 25 referring to Article XXVIII are matter of record. In the present context the disputes and difference have arisen because of the criminal acts of the petitioner of illegal diversion and retention of funds and due to the non performance among other reasons. The termination in complete and absolute terms will be applicable with effect from 16.11.2021 ahead of which the petitioner should transfer the illegally retained money with interest as well as other amounts retained and by canceling fake and inapplicable invoices and then submit its claim for management and incentive fees deducting interest @ 2% p.m. as well as after deducting the penalties/compensations payable by it due to willful breach and material adverse effect inflicted on the respondent.

80. The imagined disputes for which the petitioner is seeking redressal is bereft of any reasonable and logical thinking. In the present context, the petitioner is the source and cause of dispute, if any. This is a matter of termination of Contract. The settlement by the petitioner can be pursued post termination after providing all details sought for by the respondent in para supra as per legal and tax compliance. The Owner/Respondent is seasoned and experienced Hotel Management Professional who will manage his hotel as he managed for over a decade since 2006 and is at liberty to

chose and deploy anyone for making his venture profitable which has been pushed down the abyss of financial mess by the petitioner.

81. The contents of para 27 are wrong and denied. The termination will first severe the relationship in entirety and nothing will subsist post the termination between the petitioner and the respondent except the petitioner will transfer the illegally diverted and retained amounts and other amounts lying to the credit of the owner and claim the management fee and incentive fee as applicable and compensate the respondent for causing willful losses and liabilities and after canceling its fake and invalid invoices and take upon itself the legal and criminal cases of Vinod Kumar Yaduvashi and Sunil Joseph caused by frauds, dereliction of duty and incompetence.

82. The contents of para 28 relating to apprehensions of the petitioner are unfounded as it is matter of termination of contract and not arbitration.

83. The contents of para 29, 30 and 31 are matter of record. Hence the application be dismissed with heavy costs.

84. The learned Counsel for the applicant has relied on the following decisions in support of his case:

Sl.No.	Names of parties	Citation
01.	Wander Ltd., & Anr.V.Antox India Pvt. Ltd.,	1990(Supp) SCC 727
02.	V.V.Krishna Iyer & Sons V New Era Manufacturing Co., Ltd.,	1964 SCC OnLine Ker 206
03.	Dewan Chand Ram Saran Industries Pvt., Ltd., V ONGC & Ors.,	MANU/HP/0325/2010
04.	Nikitha Build-Tech (P)Ltd., V Natural Textiles Pvt., Ltd.,	ILR 2010 KAR 4722
05.	High Court Case status for filing FR No.CMP 515/2021 against Respondent	
06.	Capt.M.R.Hussain & Another V Intertek Testing Services India Pvt.Ltd., & Another	1999 SCC OnLine Bom 799

85. The learned Counsel for the Respondent has relied on the following decisions in support of his case:

Sl.No.	Names of parties	Citation
01.	Shree Samsthana Mahabaleshwara Deva Gokarna & Others Vs. U.F.M.Ananthraj & Ors	ILR 2021 KAR 637
02.	Royal Orchid Associated Hotels Pvt. Ltd., Vs.Kesho Lal Goyal	OMP(1) (COmm0247/2020
03.	M/S.Paton Constructions Pvt.Ltd., Vs Lorven Projects	ILR 2017 KAR 3016

	Ltd., and Another	
04.	BEML Bangalore Vs. Bucyrus International Inc	2010 SCC OnLine Kar 5059/ ILR (2010)4 KCCR 2569 DB
05.	M/S.Nikhitha Build Tech Vs M/S.Natural Textiles Pvt. Ltd.,	ILR 2010 (2) KAR 2846

The facts of the present case are considered in the backdrop of the principles laid down in the citations relied on by the applicant and respondent.

86. There is no dispute that the applicant (Operator) and the Respondent (Owner) entered in to Hotel Operation Agreement on 17th November 2017 in respect of schedule mentioned 'Regenta Resort Pushkar Fort' situated at Motisar Road, Ganahera, Pushkar, Ajmer, Rajasthan-305 022. As per Article XXIV the term of the agreement was for 10 years from the date of commencing the opening date of the Hotel i.e. from 17/11/2017 subject to mutual agreement the agreement may be renewed. However, they have agreed that first four years of the terms of contract starting from the effective date shall be considered as a lock-in-period. During the terms of contract starting from the effective date the Owner shall not be entitled to terminate the contract under any circumstance except in case of sale of Hotel as specified under Article XX. Article XXV provides for termination of the agreement in the

event of a) breach of obligations by the parties, b) termination in case of material adverse effect, c) insolvency of the parties. A combined reading of Article XXIV and XXV shows that under no circumstances except the situation envisaged under Article XX, the parties are not entitled to terminate the agreement during the lock-in-period of first four years from the date of commencement of the agreement.

87. The Respondent has sent an e-mail dated:07.08.2019 terminating the agreement and informing the applicant that they have decided to move on by themselves and deploying their marketing and management team from 1st September onward, before that there is sufficient time to wind up the things and also requested the applicant to pull back the Operation Manager and sales executive from Pushkar Fort, Pushkar.

88. The applicant is contending that the notice of termination of the agreement was issued by the Respondent during the lock-in-period and that too against the terms of the agreement. The Respondent is contending that the agreement entered in to with the applicant has not done much good to him; it has only converted a profit making entity in to a loss making entity. He has alleged various types of mismanagement, inefficiency of personnel deputed/employed

by the applicant. The applicant has denied all the allegations made against it by the Respondent.

89. The present application is filed under Section 9 of Arbitration & Conciliation Act, 1996. There is no dispute that the parties have agreed to resolve their dispute having recourse to Arbitration as per Article XXVIII of the agreement. This Court while considering an application under section 9 of the Act cannot go in to the rival claims in detail and adjudicate upon the same, as the same falls under the domain of Arbitration proceedings.

90. The Court has to consider the three cardinal principles viz., prima facie case, balance of convenience, irreparable loss or injury while considering an application filed seeking interim reliefs pending adjudication of the dispute by the Arbitral Tribunal. The very purpose of granting the interim relief is to maintain status quo so as to protect the interest of both parties. There is no dispute that the applicant is in the management of schedule hotel in terms of the agreement entered in to by the parties. The parties have agreed that the agreement shall be for a period of 10 years from 17.11.2017 and shall not be terminated before the expiry of lock-in-period of four years except as per Article XX. After the expiry of lock-in-period the parties may terminate the agreement as per

Article XXV. The validity or otherwise of the termination notice cannot be determined in this proceeding. It is suffice to determine whether the applicant has made out a prima facie case to exercise its rights under the Agreement. Having regard to various Articles enshrined in the agreement and rival contentions and voluminous documents produced by the parties and the ratio of the decision cited by the parties, I am of the opinion that the applicant has made out a prima facie case to continue to exercise its rights under the agreement without any interference from the Respondent.

91. The Respondent is contending that due to mismanagement of the hotel by the applicant he is suffering loss and he is capable of looking after the affairs of his Hotel. The applicant is contending that it has invested resources and strived very hard to create a brand status to the schedule Hotel. If it is shunted out of the Hotel uncharitably it would suffer loss of reputation and humiliation in the business field. The balance of convenience tilts in favor of the applicant on a comparison of the loss that may occasion to the applicant if the interim relief is not granted. The pecuniary loss alleged to have been suffered by the respondent may be compensated monetarily, if the applicant suffers loss of reputation it will lose its brand value and face humiliation apart from landing in infamy. Hence, the balance of convenience lies in favor of the

applicant and irreparable injury will be caused to the applicant if the interim relief is not granted to the applicant.

92. The respondent is contending that the applicant has not initiated proceedings for appointment of arbitrator even after lapse of 90 days from the date of passing of interim order. The Court has passed interim order of injunction on 03.09.2019 and extended from time to time and still in force as on date. Section 9(2) of A & C Act provides that 'Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine'. The applicant has initiated the proceedings for appointment of Arbitrator by filing FR No.CMP 515/2021 before the Hon'ble High Court of Karnataka on 08.11.2021. Hence, the delay in seeking appointment of arbitrator is not fatal to the case of the applicant. Applicant has prayed the Court to grant an order of temporary injunction restraining the respondent, and his agents, representatives, successor-in-interest and anyone claiming under/through them from attempting to terminate the Hotel Operation Agreement dated 17.11.2017 pending adjudication of disputes between the parties. As discussed above either party to the agreement are not entitled to

terminate the agreement before the expiry of lock-in-period of four years from the date of commencement of agreement except under Article XX. The lock-in-period was expired on 17.11.2021. In such circumstances, if the respondent is restrained from exercising his rights under the agreement to terminate the agreement after the expiry of lock-in-period cripples his right under the agreement. In order to balance the interest of parties a conditional order of injunction may be passed pending commencement of arbitration proceedings by the Sole Arbitrator. In view of the above discussion I am of the opinion that the applicant has made out a case so as to allow the application in part. Accordingly, I answer point No.1 in the **Affirmative.**

93. **Point No.2:** In view of the findings on the above point, I pass the following:

ORDER

The application filed by the applicant under Section 9 of Arbitration & Conciliation Act, 1996 is allowed in part.

The respondent, his agents, representatives, successors-in-interest and anyone claiming under/through him is/are hereby restrained by way of temporary injunction from interfering, obstructing and/or in any manner impeding, either directly or indirectly with the petitioner's management, operations and discharge of duties at the schedule Hotel under the Hotel Operation Agreement dated 17.11.2017;

The respondent and his agents, representatives, successors-in-interest and anyone claiming under/through them is/are restrained by way of temporary injunction from stopping/halting petitioner's operations of the Hotel;

The interim orders passed above shall be in force for a period of 90 days from the date of this order or till the passing of any order by the learned Arbitrator to be appointed whichever is later.

The parties are directed to bear their respective costs.

(Dictated to the Stenographer, corrected, signed and then pronounced by me in the open court on 13th December, 2021)

(S.J.KRISHNA)
LXXXIX ADDL.CITY CIVIL & SESSIONS
JUDGE, BENGALURU. (CCH-90)

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S J
KRISHNA

Digitally signed
by S J
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