

National Consumer Commission Grants Relief to RCI on the Basis of Lack of Privity of Contract

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Resort Condominiums International, popularly known as RCI, was dragged in a legal battle by a consumer¹ which concluded with the National Commission's verdict in May, 2014. Singhania & Partners successfully represented RCI at the National Commission.

RCI is a holiday exchange club and facilitates its members only in the holiday exchange system. The RCI affiliates resorts worldwide and provides exchanges within its network to purchase of timeshare weeks of affiliated resorts provided they become members of RCI. RCI does not own any resort anywhere in the world. The RCI exchange programme and the products and services sold by or on behalf of the affiliated resorts including holiday ownerships are also separate and distinct.

In the year 2007, the Complainant raised a dispute with the District Consumer Forum, Hyderabad, India alleging deficiency in services against M/s Gemawat Resort Ltd., in which RCI was also made a party. The whole case of the Complainant was that it paid money to M/s Gemawat Resort Ltd. towards membership of the resort, "The Village". M/s Gemawat Resort Ltd. failed in providing its services to the Complainant as the resort "Village" was not developed by them. The Complainant alleged in the complaint that it had paid an amount towards purchase of the membership of the resort to M/s Gemawat Resort Ltd. Since M/s Gemawat Resort Ltd was affiliated to RCI, the Complainant also alleged deficiency in service against RCI.

M/s Gemawat Resort Ltd. chose not to contest the matter and was proceeded ex-parte. RCI contested the complaint on the ground that M/s Gemawat Resort Ltd and RCI are distinct and separate entities and that admittedly the money was paid by the Complainant to M/s Gemawat Resort Ltd towards the services to be provided by the resort only. The services provided by RCI were distinct and limited to exchange facilities to be provided to members of affiliated resort as and when requested by the member.

Before the District Consumer Forum, RCI pleaded that there was no privity of contract between RCI and the Complainant for the development of the resort. RCI carries its operations vide two agreements: Firstly, there is a resort affiliation agreement between RCI and each affiliated resort on payment of affiliation fee by the resort. Subsequently each affiliated resort submits enrollment application forms of their members to RCI alongwith membership fee for the member's right to participate in the RCI holiday exchange program. Secondly, there is an agreement between the member and RCI termed as the 'RCI terms of Membership', which sets out the legally binding terms and conditions. The 'RCI terms of Membership' particularly provides that RCI is distinct from the affiliated resort, and the services provided by RCI stand separate from those which an affiliated resort is to provide to their respective member. Therefore, RCI does not have any obligation towards the development of the resort.

RCI further submitted that it had, in fact, disaffiliated the resort "Village" as per the contract between RCI and M/s Gemawat Resort Ltd. In spite of disaffiliation of the resort, RCI had allowed the Complainant to continue its membership with RCI for availing benefits of bonus weeks. The Complainant had further availed the facilities of RCI even after the disaffiliation of its resort. Hence, RCI has not failed in providing its services to the Complainant in any manner.

The District Forum adjudicated in favour of the Complainant on the ground that both RCI and M/s Gemawat Resort Ltd. are jointly and severally liable to compensate the Complainant on account of deficiency in services. Since RCI has taken membership fee from the Complainant, it does not become a separate entity. The aforesaid decision was further affirmed by the State Forum. While dismissing the appeal, the State

¹ (hereinafter referred to as the "Complainant").

Commission held that RCI was to provide facilities in as much as it has received the membership fee from the Complainant. Hence, RCI is responsible for the deficiency in services to be provided to the Complainant.

Aggrieved by the decision of the lower forums, RCI preferred a revision petition before the National Commission. It was contended by RCI that it is only engaged in the business of timeshare exchange and is not involved in the development of resorts. The resorts can only get affiliated with RCI on fulfillment of certain condition precedent. RCI cannot be made guilty for charging membership fee, which is very nominal. There was no privity of contract between RCI and the Complainant for the development of the resort, and that the services provided by RCI are distinct from that provided by the resort. The Complainant was mischievously attempting to link the different contractual obligations between the parties in a single contract.

While arguing on the doctrine of privity of contract, RCI placed heavy reliance on the case of *Utair Aviation v. Jagson Airlines Limited*², wherein the Hon'ble Delhi High Court discussed about the doctrine of privity of contract and held that "the doctrine of privity, while in principle, at least it prevents a third party beneficiary from suing on a contract, operates with equal logic to forbid the contracting parties to enforce obligations against a stranger. It has long been an axiom of the common law that a contract between A and B cannot impose a liability upon C". Reliance was also placed on the case of *L. Shiv Dayal Kapoor and Ors. v. Union of India*³, wherein the Hon'ble Punjab and Haryana High Court held that "I may now consider the implications of the rule underlying the doctrine of privity of contract, which means the relationship subsisting between two contracting parties. 'Privity' in this context implies a mutuality of will and is an interaction of the parties and their successors. It creates a legal bond or tie or a vinculum juris. The rule of privity of contract is that no one but the parties to a contract can be bound by it. In the words of Pollock, a third person cannot become entitled by the contract itself to demand performance of any duty under the contract."

The National Commission accepted the submission of RCI and held that the Complainant has failed to show privity of contract between RCI and itself and thus, RCI cannot be held liable for the deficiency in services rendered by M/s Gemawat Resort Ltd.



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² DRJ 129 (2012) 630.

³ AIR 1963 P&H 538.