

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT - IV

CP No.: IB 572(ND)/2022 & IA 5437/ND/2023

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

Mr. Akshay Kumar Bhatia

...Operational Creditor / Applicant

VERSUS

M/s Cue Learn Private Limited

...Corporate Debtor / Respondent

Pronounced on: 07.01.2025

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE
MEMBER (JUDICIAL)**

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

Present:

For Applicant : Mr. Sanyam Saxena, Mr. Nubair Alvi, Ms. Ramya Aggarwal, Advs.

For Respondent : Adv. Prithu Garg, Adv. Parth Bhatia, Adv. Sukriti Verma, Adv. Yashodhara Burmon Roy, Adv. Shivam Singh

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This instant application is filed by Mr. Akshay Kumar Bhatia (hereinafter referred to as '**Applicant**' / '**Operational Creditor**'), under Section 9 of the

Insolvency and Bankruptcy Code, 2016 (for brevity '**the Code**') with a prayer to initiate Corporate Insolvency Resolution Process ("**CIRP**") in respect of M/s Cue Learn Private Limited (hereinafter referred as '**Respondent**' or '**Corporate Debtor**').

2. The Respondent having CIN: U72900DL2011PTC220728 was incorporated on 10.06.2011 under the provisions of the Companies Act, 2013 having its registered office situated at D-58, Basement Kalkaji, New Delhi – 110019. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Adjudicating Authority having territorial jurisdiction over the NCT of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent Corporate Debtor.
3. The present petition was registered on 01.08.2022 before this Adjudicating Authority by Mr. Vedaant Baali, authorized vide Power of Attorney granted by Mr. Akshay Kumar Bhatia (*annexed to the Application as Exhibit "A"*). The present petition is filed before this Adjudicating Authority on the ground that the Respondent has failed to make payment of a sum of Rs. ₹4,83,24,201/- (Rupees Four Crore Eighty-Three Lakh Twenty-Four Thousand Two Hundred One only). The Demand Notice sent by the Operational Creditor to the Corporate Debtor is annexed to the Petition as Exhibit- "H".
4. Ld. Counsel for the Applicant has raised the following contentions:
 - a. The Applicant, an actor in the Indian film industry, entered into an Endorsement Agreement dated 8th March 2021 with the Respondent, a private limited company engaged in tutoring mathematics and aligned subjects. Under the Agreement, the Applicant was engaged to render

services as specified therein, subject to the payment of all amounts, including the Consideration, by the Respondent and fulfillment of other obligations by the Respondent. The Applicant agreed to make himself available for a maximum of two days (the "Dedicated Period") on dates mutually agreed in writing, provided there was no default by the Respondent.

- b. The relevant clauses of the Agreement include the following:

Clause 3.2: The Applicant's obligation to render services during the Dedicated Period is conditional on the Respondent's performance, including payment of the full consideration.

Clause 3.6(b): Non-utilization of the Dedicated Period by the Respondent would not constitute a breach by the Applicant, nor would it entitle the Respondent to any refund.

Clause 5.1.2: The second payment of Rs. 4,05,00,000/- plus GST was to be made by 15th April 2022 or seven days prior to the utilization of the second day, whichever is earlier.

Clause 5.5: Time was stipulated as the essence of the contract, with a penalty interest of 12% p.a. for any default in payment.

- c. The Applicant fulfilled his obligations by rendering services on the first day as required, and the deliverables (TVCs) were utilized by the Respondent on its social media platforms. The Applicant further adhered to the clause restricting endorsements for competitive websites, even though the Respondent defaulted on the second payment.
- d. The Respondent made the first payment of Rs. 4,05,00,000/- plus GST but failed to make the second payment due on 15th April 2022, raising

frivolous and contradictory defences, such as non-receipt of the invoice and lack of agreed dates for the second day. These defences were baseless as the payment obligation was independent of the utilization of the second day.

- e. The second payment due under the Agreement qualifies as an Operational Debt, as it arises from services provided by the Applicant. The debt crystallized and became due on 15th April 2022. The Respondent's failure to pay constitutes a default under Section 3(12) of the Insolvency and Bankruptcy Code, 2016 (IBC). The Applicant's claim is maintainable under Section 9 of the IBC, and the Tribunal's role is limited to ascertaining whether the debt is due and payable, which is evident in this case.
- f. Payment was not contingent on the Applicant's availability for additional days. Clause 5.1.2 clearly states that the second payment was due irrespective of whether the Respondent utilized the second day. The Respondent never requested a schedule for the second day, making its defence untenable.
- g. The Applicant claims Rs. 4,83,24,201/- as Operational Debt, comprising Rs. 4,05,00,000/- plus GST (18%) and interest at 12% per annum as per the Agreement. A Demand Notice under Section 8 of the IBC has been issued in this regard.

5. In reply to the contentions raised by the Petitioner, the Ld. Counsel for the Respondent has put forth the following:

- a. Vide the Endorsement Agreement dated 08.03.2021 (Exhibit 0(ii), Pg. 27-61 of CP), the Respondent engaged the Petitioner to "render the

service," specifically to "make [himself] available for not more than two days" for endorsing the Respondent's website, in exchange for monetary consideration.

- b. The term "Services" is defined in the Agreement as the Petitioner making himself available for Television Commercial ("TVC") and photoshoot.
- c. The "Dedicated Period" stipulated in the Agreement was "not more than two days."
- d. The total consideration of Rs. 8.10 crores was payable to the Petitioner in two tranches:
 - Rs. 4.05 crores to be paid on or before 04.03.2021 or seven days prior to the utilization of one (1) day, whichever is earlier ("Signing Amount" for "Day 1").
 - Rs. 4.05 crores to be paid on or before 15.04.2022 or seven days prior to the utilization of two (2) days, whichever is earlier ("Second Tranche" for "Day 2").
- e. The Signing Amount of Rs. 4.05 crores was paid on 04.03.2021, and the Petitioner rendered services for Day 1 on 08.03.2021 as agreed.
- f. The Respondent did not release the Second Tranche on 15.04.2022, citing ambiguity in the contract clauses concerning services for Day 2.
- g. The Respondent issued an email on 19.04.2022 requesting a discussion with the Petitioner regarding the ambiguity in the contract terms, but the Petitioner did not respond directly or participate in any discussion.

- h. Instead, the Petitioner issued a Demand Notice dated 20.05.2022 under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("IBC").
- i. The Second Tranche of Rs. 4.05 crores was payable as consideration for rendering services on Day 2. However, the Petitioner has neither offered to "make himself available" for services on Day 2 nor adhered to the corresponding contractual requirements.
- j. The Agreement clearly distinguished the Signing Amount (Rs. 4.05 crores) for services on Day 1 and the Second Tranche (Rs. 4.05 crores) for services on Day 2.
- k. Relevant clauses of the Agreement support the Respondent's position:
 - Clause 1.1.11: "Services" mean making oneself available for TVC and photoshoot.
 - Clause 3.1: The Company engages the Artist to render the services.
 - Clause 3.2: The Artist shall make himself available for no more than two days, subject to payment of all amounts, including consideration by the Company, and mutual agreement on dates.
 - Clause 3.10: The Artist is not liable to make himself available beyond the stipulated two days, even if services are incomplete for any reason.
 - Clause 5.1: Consideration of Rs. 8.10 crores is payable for the Artist's availability to render services.
- l. The Petitioner has not "made himself available" for rendering services on Day 2, nor has he provided any communication to the Respondent regarding dates for Day 2.

- m. The Agreement requires mutual agreement on the schedule for rendering services on Day 2 (Clause 3.2). The Petitioner failed to propose any schedule, which is a prerequisite for releasing payment seven days in advance.
- n. The contention that the Second Tranche became due and payable without the Petitioner rendering services on Day 2 is baseless.
- o. The Petitioner's reliance on Clause 3.27 to claim that consideration was payable for blocking him for two years is misplaced. Clause 5.1 makes it clear that the consideration was solely for rendering services during the Dedicated Period.
- p. Clause 3.27, which restricts the Petitioner from endorsing competitive websites, is incidental to the contract and does not establish a separate right to consideration.
- q. The Petitioner's claim arises from the alleged "breach" or "default" by the Respondent in failing to release the Second Tranche on 15.04.2022. This claim falls under Clause 7.2(c) of the Agreement, which deals with "Company's Default" and provides for liquidated damages.
- r. Therefore, the present insolvency petition is not maintainable as it is based on an unadjudicated claim for liquidated damages arising from an alleged breach of contract, which is outside the scope of the IBC.

Findings & Analysis:

6. We have heard the Learned Counsel for both the Operational Creditor ("OC") and the Corporate Debtor ("CD") and have meticulously examined the documents submitted by the parties. Upon due consideration of the arguments advanced and the evidence placed on record, it is observed that this Application has been filed by the Applicant primarily on the ground that the Respondent failed to pay an amount of Rs. 4,83,24,201 (*Principal amount of Rs. 4,77,90,000/- plus interest of Rs. 5,34,201/-*) allegedly due under the terms of an agreement dated 08.03.2021. The said agreement was entered into between the parties for rendering specific services within a stipulated timeframe.
7. For a Section 9 Application to be admitted under the Insolvency and Bankruptcy Code, 2016 ("IBC"), the primary requisite is that the debt should qualify as an operational debt as defined under Section 5(21) of IBC, 2016. This definition is extracted below for reference:
"Operational debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government, or any local authority."
8. Considering the above definition, and examining the facts of the case, we turn to Clause 3.2 of the Agreement, which states:
"Subject to performance of all obligations (including payment of the entire consideration), OC agreed to make himself available for not more than Two (2) Days to render the Services, on mutually agreed day, time, place, and schedule."

9. Upon analysis of Clause 3.2, it is evident that the Petitioner's obligation to render services was contingent upon fulfilment of certain conditions, including payment of the agreed consideration. However, there is no documentary evidence on record to indicate that these conditions were fulfilled. Consequently, the obligation to render services on the second day did not materialize as the necessary preconditions were not met. The lack of performance on the part of the OC to provide the required services negates the assertion of an operational debt.
10. Further, it is pertinent to highlight that Clause 7.2(a) of the Agreement explicitly states that in the event of default by the Respondent, the Artist's obligations, including rendering services on Day 2, shall come to an end. This clause clearly delineates that the claim arising in such a scenario would not be towards consideration for services but would instead be a claim for damages. Claims for damages, however, do not fall within the ambit of operational debt as defined under the IBC.
11. While there may exist a claim for a monetary amount due to the Respondent's alleged default, this claim does not qualify as operational debt under the provisions of the IBC. The claim pertains to a breach of contract and is, at best, a claim for liquidated damages as provided under Clause 7.2(c) of the Agreement. Such claims require adjudication before a competent civil court and do not constitute crystallized debts that can be pursued under the insolvency resolution process.
12. The jurisdiction of the NCLT is limited to adjudicating applications strictly within the framework of the IBC. The NCLT's role is to oversee the insolvency resolution process for qualifying debts, and it cannot be

expanded to encompass disputes of a contractual nature that do not fall under the operational or financial debt categories defined by the IBC. Accordingly, the NCLT is not the appropriate forum for adjudication of such claims.

13.As the debt in question does not qualify as operational debt, we do not deem it appropriate to delve into further facts and merits of the case. The essence of the IBC lies in resolving insolvency matters through a process-driven approach, and any deviation from its prescribed scope would undermine the legislative intent of the Code.

14.In light of the above facts and circumstances, we conclude that the Application bearing **CP No.: IB 572(ND)/2022 & IA 5437/ND/2023** filed by the Applicant/Operational Creditor, under section 9 of the Code read with Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is not maintainable and stands **dismissed**.

No orders as to cost. Files be consigned to records.

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(DR. SANJEEV RANJAN)

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)