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**BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

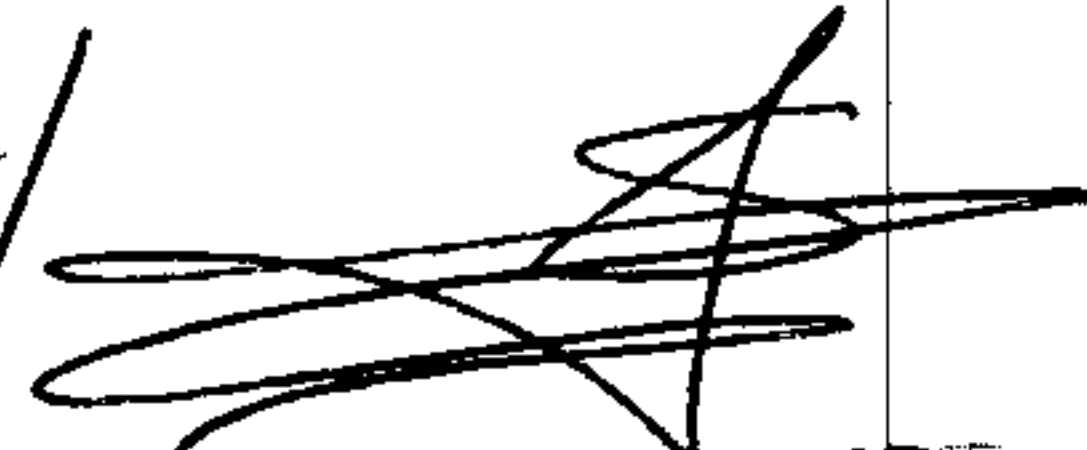

IA 285/2017 in C.P. (I.B) No. 123/9/NCLT/AHM/2017

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 12.01.2018**

Name of the Company: Shalby Ltd
V/s.
Dr. Pranav Shah.


Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	GURSHARAN H. VIRK	Adv.	for Respondent/	
2.	SHRIRAJ KHAMBETE i/b NANAVATI ASSOCIATES	Adv	Applicant Opp/Petitioner	

ORDER

Learned Advocate Mr. Gurusharan Virk present for Applicant/ Original Respondent. Learned Advocate Mr. Shriraj Khambete i/b Nanavati Associates present for Operational Creditor/Respondent/ Original Petitioner in IA 285/2017.

Order in IA 285/2017 pronounced in open court. Vide separate sheets.


MANORAMA KUMARI
MEMBER JUDICIAL
Dated this the 12th day of January, 2018.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AMEDABAD BENCH
AHMEDABAD**

**IA 285/2017 in
CP (IB) No. 123/9/NCLT/AHM/2017**

In the matter of:

1. Shalby Ltd.
Opp. Karnavati Club
Sarkhej Gandhinagar Highway
Nr. Prahladnagar Garden
Ahmedabad 380 015

: Applicant
: Corporate Debtor

VERSUS

1. Dr. Pranav Shah
A-7, Jyot Prabhat Flats
Opp. Sardarnagar Bus Stop
New Vikas Gruh Road
Paldi
Ahmedabad 380 007

: Respondent
: Operational Creditor

Order delivered on 12th January, 2018

**CORAM: Hon'ble Mr. Bikki Raveendra Banu, Member Judicial
Hon'ble Ms. Manorama Kumari, Member Judicial**

Appearance:

For the Applicant : Learned Senior Advocate Mr. Saurabh Soparkar with Learned Advocate Mr. Gurusharansingh Virk.

For the respondent : Learned Advocate Mr. Nandish Chudgar i/b Nanavati Associates.

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Page 1 | 8

ORDER

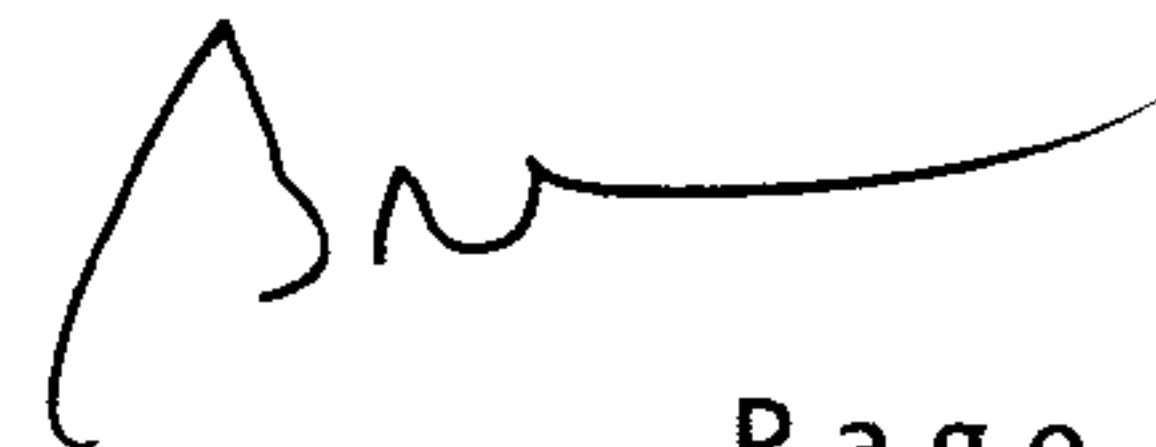
1. Respondent/Corporate Debtor in Company Petition No. 123 of 2017 filed this application with a request to relegate the parties to the Company Petition (I.B.) No. 123 of 2017 to arbitration in terms of the agreed procedure for dispute resolution stated in the Consultancy Agreement dated 30.09.2008 and dismiss Company Petition (I.B.) No. 123 of 2017.
2. The applicant herein is corporate debtor in Company Petition (I.B.) No. 123 of 2017. Respondent herein is petitioner/operational creditor in Company Petition (I.B.) No. 123 of 2017. The parties in this order are referred to as operational creditor and corporate debtor for the sake of convenience and better understanding.
3. Operational creditor filed Company Petition (I.B.) No. 123 of 2017 under Section 9 of The Insolvency and Bankruptcy Code, 2016 with a request to trigger Corporate Insolvency resolution process in respect of corporate debtor – Shalby Ltd.
4. In the said petition, objections were filed by the corporate debtor. Operational creditor also filed rejoinder. Even before filing the objections, corporate debtor filed this application (IA 285 of 2017) under Section 8 of the Arbitration and Conciliation

Shalby

[Signature]

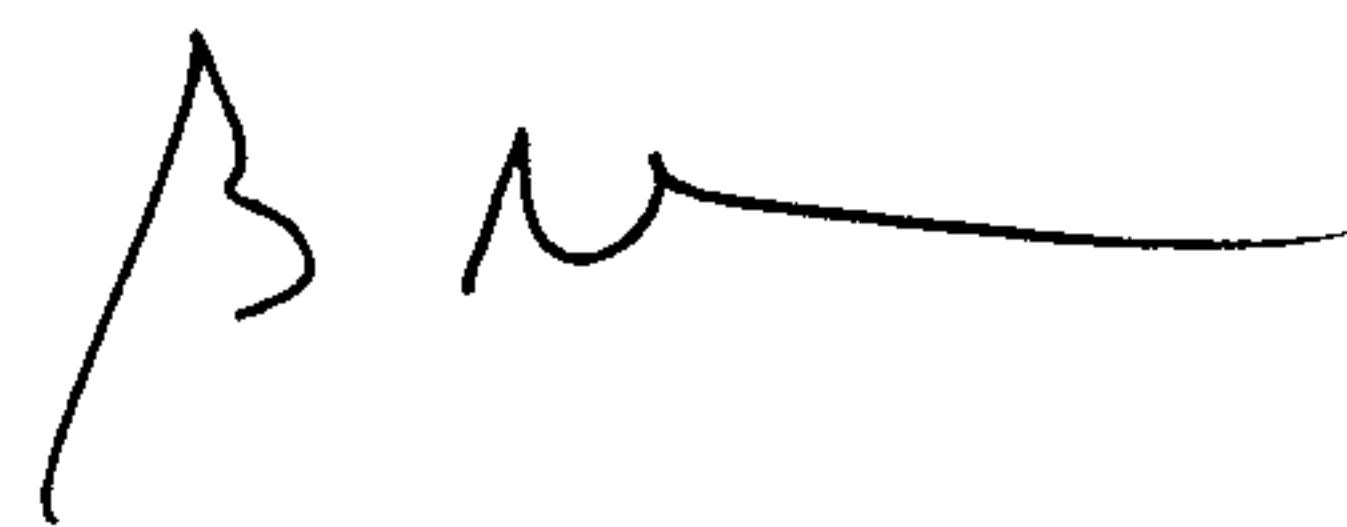
Act, 1996 with a prayer to relegate the parties to Company Petition (I.B.) No. 123 of 2017 to Arbitration.

5. Facts in brief that are stated in this application are as follows:-
6. There is a Consultancy Agreement dated 30.09.2008 between the operational creditor and the corporate debtor. As per the said agreement, operational creditor was required to provide his services to the corporate debtor in return for the consideration prescribed in the agreement and subject to fulfilment of the terms and conditions stipulated in the said agreement. Duration of the agreement is till the operational creditor attains the age of sixty years.
7. It is also stated that there was exchange of e-mails during the month September-October, 2016 and those e-mails were deliberately suppressed by operational creditor in this petition.
8. It is also stated that operational creditor in breach of the agreement started offering his full time services elsewhere and, therefore, corporate debtor was constrained to address a notice dated 22.06.2017 to the operational creditor. It is also stated that operational creditor abruptly discontinued his services without serving notice period. Corporate debtor demanded an amount of Rs. 77,80,473/- from the operational creditor. According to the corporate debtor to counter the said

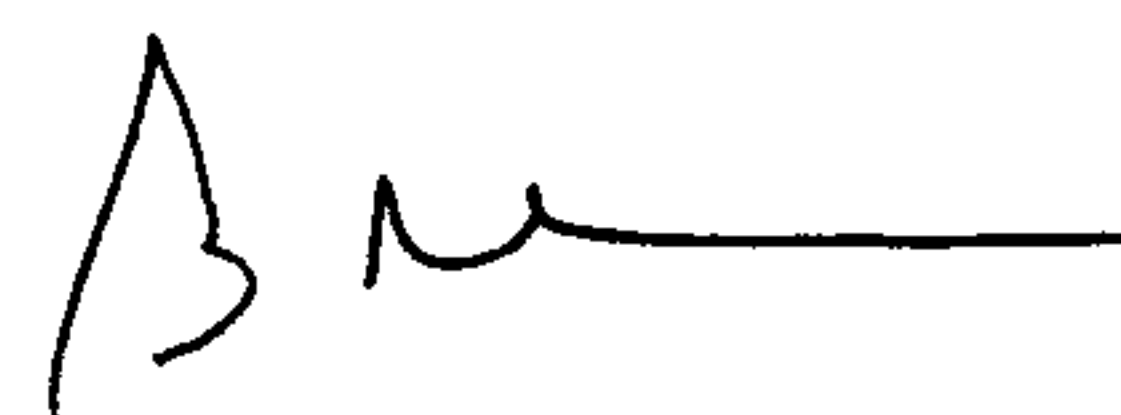


claim of corporate debtor, operational creditor concocted a fictitious claim and filed Company Petition (I.B.) No. 123 of 2017.

9. It is the case of the corporate debtor that, there exists long outstanding and long drawn disputes between the corporate debtor and operational creditor even prior to issuance of said notice by operational creditor on 04.08.2017.
10. According to the petitioner, in view of Clause 16 of the Consultancy Agreement dated 30.09.2008, the parties in Company Petition (I.B.) No. 123 of 2017 should be relegated to arbitration under the provisions of Arbitration and Conciliation Act, 1996.
11. It is further stated in the application that, as per clause 16 of the Consultancy Agreement dated 30.09.2008 any dispute under or arising out of the agreement and appointment letter whether relating to the interpretation or performance of the agreement shall be referred to sole arbitrator to be appointed by the company in accordance with the provisions of the Arbitration and Conciliation Act, 1996.



12. In the application certain allegations were made against the operational creditor. Those were not relevant for the purpose of adjudication of this application. Therefore, they are not being narrated here.
13. On this application, operational creditor filed objection stating that objective of Insolvency and Bankruptcy Code 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate person, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the priority of payment of government dues. According to the operational creditor, this petition is filed not to recover the amount due from the corporate debtor but it is filed to have Corporate Insolvency Resolution Process in respect of the corporate debtor since the corporate debtor is unable to pay the operational debt due to the operational creditor. Further it is stated in the objection that the subject matter which is under adjudication in Company Petition (I.B.) No. 123 of 2017 is within exclusive jurisdiction of adjudicating authority. It is further stated that Arbitral Tribunal has no jurisdiction over the subject matter of Insolvency Resolution Process or the liquidation process contemplated under the IB code and, therefore, the parties cannot be relegated to arbitration. It is contended by the learned counsel for corporate debtors that Hon'ble Supreme




Court in the decision in Haryana Telecom Ltd. v/s. Sterlite Industries (India) Ltd. reported in (1999) 5 Supreme Court Cases, page 688 clearly held as follows: -

"an arbitrator notwithstanding any agreement between the parties, could have no jurisdiction to order winding up of a company since such power is conferred on a Court by the Companies Act"

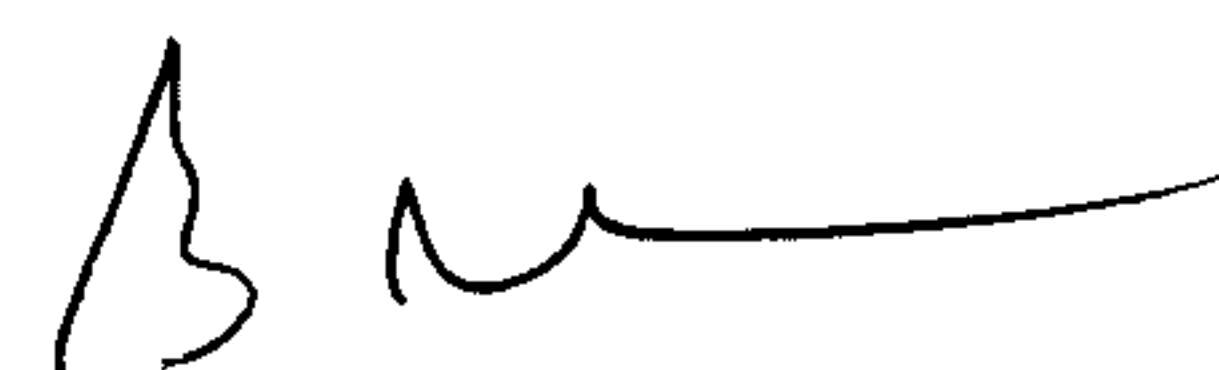
14. Learned counsel appearing for the corporate debtor relied upon the decision of Hon'ble Supreme Court in Mobiloxx Innovations Pvt. Ltd. v/s. Kirusa Software Pvt. Ltd. wherein it is held that what is the scope of dispute. In this application it is not necessary to find out whether there is any dispute in existence before issuance of notice under Section 8 of the Code since that issue can be gone into Company Petition (I.B.) No. 123 of 2017.
15. Learned counsel appearing for the corporate debtor contended that winding up process is a right in personam and not rights in rem. Therefore, arbitrator may not have jurisdiction to decide the winding up of a company. Learned senior counsel appearing for the corporate debtor further contended that Corporate Insolvency Resolution Process is a right in personam and not right in rem. He further contended that since no





admission order has been passed at this stage parties can be relegated to arbitration, on the ground insolvency resolution plan not yet commenced.

16. Argument of learned senior counsel for the corporate debtor that Insolvency Resolution Process is not a right in rem and it is only against a particular person do not merit acceptance. Even in Corporate Insolvency Process the claims of all the creditors should be taken into consideration by Resolution Professional and resolution plan will be prepared taking into consideration the value of the debts, assets of the company, the nature of business of the company etc. Therefore, this kind of issues are not within the jurisdiction of arbitration.
17. The reliefs prayed in this petition is only to initiate corporate insolvency process by appointing insolvency resolution professional but not for recovery of money. Therefore, this Adjudicating Authority is of the considered view that the Arbitration Tribunal is not having jurisdiction over the subject matter of Company Petition (I.B.) No. 123 of 2017 irrespective of arbitration clause in the Consultancy Agreement dated 30.09.2008.
18. The decision relied upon by the learned counsel for corporate debtor in Haryana Telecom Ltd. v/s. Sterlite Industries (India) Ltd. applies to the facts of the case also.



19. In view of the above said discussion, this application is dismissed. Applicant shall pay costs Rs. 50,000/- (Rupees fifty thousand only) to the respondent operational creditor.



**Ms. Manorama Kumari,
Member Judicial
Adjudicating Authority**



**Bikki Raveendra Babu
Member Judicial
Adjudicating Authority**

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