

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.143/BB/2017
U/s 9 of IBC, 2016
U/R 6 of I&B(AAA) Rules, 2016

In the matter of:

Ms.Rohita

No.32, 8th Main, 18th Cross,
Sadashivnagar,
Bengaluru – 560080.

- Petitioner/Operational Creditor

Versus

M/s. All That Hype Media Private Limited.,

#216, 4th Cross, 20th Main,
4th Cross, 1st Stage,
BTM Layout,
Bangalore.

- Respondent/Corporate Debtor

Date of Order: 12th March, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Ms. Maria Joseph
For the Respondent : Shri Abheek Saha

ORDER

Per:Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.143/BB/2017 is filed by **Ms. Rohita (Petitioner/Operational Creditor)** U/s 9 of IBC, 2016, U/R 6 of I&B (AAA) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of **M/s. All That**

Hype Media Private Limited (Respondent/Corporate Debtor), on the ground that the Corporate Debtor committed a default of amount of Rs. 7,95,403/- (Rupees Seven Lakh Ninety Five Thousand Four Hundred and Three Only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- 1) Ms. Rohita (herein after referred as Petitioner/Operational Creditor), has been in the digital marketing industry for 7 years and has won awards for work done by her. She has worked with a number of leading brands such as Tanishq, Puma, Central, 3M and Titan etc.
- 2) M/s. All That Hype Media Private Limited., (herein after referred as Respondent/Corporate Debtor) was incorporated on 10.02.2014 as Private Company under the provisions of Companies Act, 1956. Its Authorized Share Capital is Rs. 1,00,000/- (Rupees One Lakhs only) divided into 10,000/- (Ten Thousand only) equity shares of Rupees 10/- (Rupees Ten only)
- 3) Pursuant to several rounds of discussions and negotiations between Ms. RuhiFazila Shaik, the Director of the Corporate Debtor, who is in charge of its day to day running and affairs, and the Operational Creditor, the Operational Creditor was asked to join the Corporate Debtor and guide/assist the Corporate Debtor in carrying on its business of content creation services and introduce influencer marketing. The then Directors requested the Operational Creditor to invest her time and expertise in the Corporate Debtor, in return the Operational Creditor was to receive a 20% ownership stake in the Company and a fixed salary.



- 4) The Operational Creditor started working with the Company full time from December 2015. Through the Operational Creditor hard work and commitment, the Operational Creditor was able to secure profitable projects for the Company from leading brands such as Lifestyle, Titan etc. She has managed the affairs of Company successfully without any support from the Director, Ms.RuhiFazila Shaik. While, the focus was to be on influencer marketing 75% and 25% was on content creation services, however since Ms. RuhiFazila Shaik was unavailable for the first six months, the Operational Creditor had to take on other roles and do 70% of the companies work.
- 5) Subsequently, it was decided by the Corporate Debtor that the Operational Creditor would be entitled to 25% equity share in the Company. It was further mutually agreed that the Operational Creditor's salary and the salary of Ms. RuhiFazila Shaik would be the same and further the Operational Creditor would be entitled to 50% profit of the Company. However, there was no formal documentation between the parties. On all occasions, when the Operational Creditor would enquire regarding the progress of the formalities, the Corporate Debtor would assure the Operational Creditor that the process had been initiated and that it would take some to complete the formalities. The Operational Creditor received mails from the Directors of the Company showing that the process to appoint her as a Director of the Company had begun and the paperwork for the same was being undertaken. Trusting the Corporate Debtor, the Operational Creditor did not press for completion of the formalities.



- 6) In or around in the month of June 2016, Ms. RuhiFazila Shaik, the Director of the Corporate Debtor, citing personal reasons, informed the Operational Creditor that she intended to shut down the Company and wanted to focus on her blog. The Operational Creditor reluctantly agreed to the same as the Operational Creditor was left with no other alternative. The Operational Creditor was also promised severance pay of three months' salary apart from the share of profits due as settlement of all accounts.
- 7) The Corporate Debtor unilaterally decided July 31st, 2016 would be the Operational Creditor's last day at the Company. The Operational Creditor was compelled to accept the same as the Operational Creditor was left with no alternative. The Operational Creditor requested that all accounts be drawn up in order to ascertain the exact position of the Company and for calculation of all amounts that were due to the Operational Creditor. The Company's Accountant was asked to prepare the final statement of accounts. As per the Statement of account, profits of the Company were ascertained at Rs. 15,90,806/- (Rupees Fifteen Lakhs Ninety Thousand Eight Hundred and Six only) and the same was split in the manner:

Sl. No.	Particulars	Rate	Amount Due
1	Share of the Operational Creditor in the profits of the Company	50%	7,95,403/-
2	Share of Ms. RuhiFazila Shaik in the profits of the Company	50%	7,95,403/-

- 8) It is submitted that the Operational Creditor is further entitled to 25% share in the assets of the Company. Thus, Corporate Debtor is liable to pay the Operational Creditor a sum of Rs.7,95,403/- (Rupees Seven Lakh Ninety Five Thousand Four Hundred and Three only), being 50% of the profits of the company. It is also stated that the Company has rented out an office space for the Company in Ulsoor and brought another investor without informing Operational Creditor. Subsequently, they have been asking the Operational Creditor to settle the matter at unreasonable terms without any explanation. The Operational Creditor has been threatened to accept Rs.5,00,000/- as full and final settlement without any justification.
- 9) In retrospect, the Operational Creditor realizes that her intentions have been malicious and deceptive from the very outset. The legal dues owed to the Operational Creditor has been illegally retained by the Company on account of the Corporate Debtor to the tune of Rs.7,95,403/- (Rupees Seven Lakhs Ninety Five Thousand Four Hundred and Three only). The Corporate Debtor has further made all attempts to deprive the Operational Creditor of her legitimate share of 25% equity share in the Company. However, the Corporate Debtor has offered to pay Rs.5,39,000/- as full and final settlement of all dues without giving any justification regarding its offer. It is asserted that the Corporate Debtor be declared as Insolvent and Bankrupt and its continued existence is harmful for the business community in general.
3. The Respondent/Corporate Debtor has filed a Written Statement dated 27.03.2018, by inter alia contending as follows:

- 1) It is stated that "All that Hype Media Pvt. Ltd." is a well reputed Company and is having a very large clientele and among others, is engaged in providing services of content creation and content distribution services. They have denied each and every statement or contention which is inconsistent with or contradictory to whatsoever is stated in this written statement, and no statement, or contention, not specifically denied by the Corporate Debtor, shall be deemed to have been admitted, merely for want of a specific traverse.
- 2) The Legal Notice received from the Operational Creditor, which though not a notice under Section 8 of the I&B Code, 2016, it was immediately replied on 24th March 2017 by disputing her contentions and claims.
- 3) The Corporate Debtor was incorporated with the aim of formalizing and expanding the activities previously undertaken solely by Mrs. Ruhi under the online platform 'Republic of Chic', which included content creation and content distribution services. While 'Republic of Chic' already provided content services for clients like Tanishq, Central etc. The Company was also set up to provide content services for brands beyond those serviced by 'Republic of Chic'. Thus the aim of setting up the Company was to separate content distribution platform and also to formalize content services under the Company, which 'Republic of Chic' was already providing.
- 4) The Corporate Debtor being represented through its Director Mrs. Ruhi, accepted the proposal of the Operational Creditor to contribute as 'influencer marketing' executive and joined the services of the Corporate Debtor Company during

September 2014 as a part time employee for a remuneration of Rs.25,000/- to launch and lead its influencer marketing wing. The arrangement was purely due to personal relationship between the Parties and thus initially no contract was entered into between the Parties for services to be offered by the Operational Creditor. Further in the same period, apart from working for the Corporate Debtor Company, the Operational Debtor also continued providing services to various other organizations.

- 5) The Corporate Debtor was hopeful of substantial business for the Company due to representation by the Operational Creditor but it did not get from her thus influencer marketing division did not launch as expected. In fact a significant part of the Company's revenue and business was attributable to the business and goodwill generated by Ms. Ruhi through her online portal 'Republic of Chic' and the contribution of the Operational Debtor herein was very limited.
- 6) Due to failure on part of the Operational Creditor, to appropriately contribute to the Company's business, the Company's revenue reduced significantly and Mrs. Ruhi, along with the Founding member and the then Director of the Company Mr. Gautham Reghunath had to substantially reduce their salaries, and expenditure of the Company activities. Despite the same earnest efforts was made by Mrs. Ruhi to ensure that all payments were made on time and also that Ms. Rohita gets her payments and salary on time.
- 7) Subsequently, Mr. Gautham Reghunath decided to quit from the operational role within the Company during March 2016 leading to reduce the business. Therefore, the Operational



Creditor, voluntary started considering alternatives and eventually terminated her engagement with the Company during June 2016. Accordingly, she was also was also paid salary for months of June and July 2016 purely out of a goodwill gesture even though there were no legal obligations on the part of the Company or their Directors to make such payments. That after a lapse of considerable time and without any evidence, the petitioner started making claims un-tenable grounds and filed the instant petition by abusing the process of law for illegal gains and to harass the Corporate Debtor and their Directors.

- 8) The Operational Creditor invested her time in the Company at her own will and her engagement or the terms thereof (including grant of 20% ownership of a fixed salary) as alleged by the Operational Creditor was never formalized under any agreement between the Operational Creditor and the Corporate Debtor. It is alleged that the Corporate Debtor also suffered multiple losses and damages due to actions of the Operational Creditor. Apart from failing to set up a successful 'Influencer marketing wing' for the Company as was promised by her, she also started soliciting clients and adding them under her own name or redirecting business to other entities creating further losses and acting against the interest of the Corporate debtor herein. The Corporate Debtor holds substantial proof that the Operational Creditor during her employment with Corporate Debtor and thereafter worked for clients of Corporate Debtor and thus creating losses for the Corporate Debtor Company.



9) Since Operational Creditor being personally known to Mrs. Ruhi, she did not take any actions against her or claimed damages and allowed her to leave a good note but when out of no-where she started demanding money, shares in the Company and served legal notice on the Corporate Debtor, the Company immediately raised dispute and clarified its stand through reply dated 24th March 2017 which the Operational Creditor herein failed to produce with an intention to succeed in its action to abuse the process of law for illegal gains.

10) They have relied upon the following judgments in support of their case:

1. *Macquarie Bank Limited vs. ShilpiCable Technologies Ltd.* decided on 15.12.2017, reported¹
2. *Mobilox Innovations Private Limited vs. Kirusa Software Private Ltd.*² and relied upon para 40 of the judgment, which is extracted below:

"40. It is clear, therefore, that once the Operational Creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application Under Section 9(5) (2) (d) if notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the Operational Creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation

¹MANU/SC/1609/2017,(2018) 2 SCC 674.

²MANU/SC/1196/2017, (2018) 1 SCC 353



and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

4. Heard Ms. Maria Joseph, learned Counsel for Petitioner and Shri AbheekSaha learned Counsel for Respondent. We have carefully perused the pleadings of both the party and extant provisions of the Code and the law.
5. Ms. Maria Joseph, learned Counsel for Petitioner, while reiterated various averments made in the pleadings raised on behalf of the Petitioner, as further submitted that the Petitioner has generated tremendous revenue and became and profit-making enterprises basing on the assurance has been given. The E-mail sent by the Respondent shows that the Company was processing to appoint her as a Director. The services of Petitioner was terminated on 31st July, 2016. Therefore, as per oral agreement, the Respondent/Corporate Debtor is liable to pay the Operational Creditor a sum Rs. 7,95,403/- (Rupees Seven Lakh Ninety Five Thousand Four Hundred and Three Only), being 50% of the profits of the Company of total profits of the Company were ascertained at Rs. 15,90,806/- (Rupees Fifteen Lakh Ninety Thousand Eight Hundred and Six Only). The Respondent also agreed that the certain amount was due

and payable to the Petitioner. Since the application is filed in accordance with law and debt and default is not seriously in dispute, the Learned Counsel urged the Tribunal to admit the case by initiating CIRP with consequential orders.

6. Shri AbheekSaha, learned Counsel for Respondent, while reiterating various averments made in the Company Petition, has further submitted that the Respondent has raised substantial dispute even before issuing Demand Notice dated 25th September, 2017 under the Code. The Petitioner has issued a Legal Notice dated 09th February, 2017 to the Respondent, by inter alia demanding specific performance and settlement for an amount of Rs. 7,95,403/- (Rupees Seven Lakh Ninety Five Thousand Four Hundred and Three Only) and also to execute a share purchase agreement transferring 25% of the equity shares of the Company. In pursuant to that, the Respondent has given a reply 24th March, 2017, by inter alia stating that the Petitioner has joined the Company's services in September 2014 as a part time employee for remuneration of Rs. 25,000/- , along with to launch and lead its influencer marketing wing. The Arrangement was purely on the basis of the relationship between the Petitioner and Ms Ruhi and no contract was entered into in that regard and also denied the contention to transfer 25% shares in the assets of the Company. Even the alleged offer of payment of Rs. 5,00,000/- was also denied. Therefore, he urged the Tribunal to dismiss the Company Petition.

7. As stated supra, there is no valid Legal Enforceable Agreement entered into between the Petitioner and Ms. Ruhi on behalf of the Respondent/Corporate Debtor. The only G-mail dated 20th May, 2016 was filed in support of the Petitioner's case with regard to split



of equity with yearly profits shares etc. Admittedly, there is no action taken in pursuant to the alleged E-mail. As per law, evidentiary value of e-mails is on low footing and unless other party agrees it, it cannot have evidentiary value and more so in financial issues. The Petitioner has also relied upon E-mail dated 20th May, 2016 in the Legal Notice dated 25th September, 2017, in support of the case. Moreover, admittedly, there is no valid Contract/agreement entered into between the parties to accrue any legal right to the petitioner to recover the alleged amount from the Respondent. As stated supra, there is serious dispute raised by the Respondent even before issuing notice under the Code. Therefore, as per oral understanding between the parties, the petitioner was paid salary/remuneration for the months of June 2016 & July, 2016, purely out of goodwill without any legal obligation. On the other hand, the Respondent has claimed that they have suffered losses of Rs. 50,00,000/- due to defective service of petitioner. Therefore, disputes questions of facts and rival claims cannot be adjudicated in a summary proceedings like proceedings under the Code.

8. It is a settled position of law that the provisions of Code cannot be invoked for recovery of outstanding amount but it can be invoked to initiate CIRP for justified reasons as per the Code. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*³, has inter alia, held that IBC, 2016 is not intended to be substitute to a recovery forum. In another latest judgment rendered in *Transmission Corporation of A.P.Ltd. Vs.*

³ (2018) 1 SCC 353



Equipment Conductors and Cables Ltd.,⁴ Supreme Court of India, it is, inter alia held that existence of undisputed debt is sine qua non of initiating CIRP. As per para 34 of judgment, it is stated that Adjudicating Authority, while examining an application filed under Section 9 of Code, will have to determine:

- i. Whether there is an 'operational debt' as defined exceeding Rs.1 Lakh?
- ii. Whether documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
- iii. Whether there is existence of dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before receipt of demand notice of the unpaid operational debt in relation to such dispute?


If any one of aforesaid conditions is lacking, the application would have to be rejected.

9. In view of the facts and circumstances of the case, we are of the considered opinion that the Instant Company Petition is filed that intention to recover the alleged dues, on the alleged e-mail dated 20.05.2016, and sent by the Respondent. However, the alleged amount itself is in dispute even prior to the issue of Demand Notice dated 25th September, 2017 under the Code. Therefore, the amount in question is in dispute even prior to the issue of demand notice and, it is filed for with sole intension to recover it. Therefore, we are of considered opinion that it is not


⁴(CA No.9597 of 2018) dated 23rd October, 2018, (2018) 147 CLA 112 (SC)

fit case to admit to initiate CIRP etc. and thus it is liable to be dismissed.

10. Hence, C.P (IB) 143/BB/2017 is hereby dismissed. However, this order will not come in the way of Petitioner to invoke any other remedy available under any other law for redressal of her grievances. No order as to costs.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Raushan