

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**


C.P. (I.B) No. 32/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 12.03.2020**

Name of the Company: United Media Works Pvt. Ltd.
V/s
Khushi Advertising Ideas Pvt. Ltd.

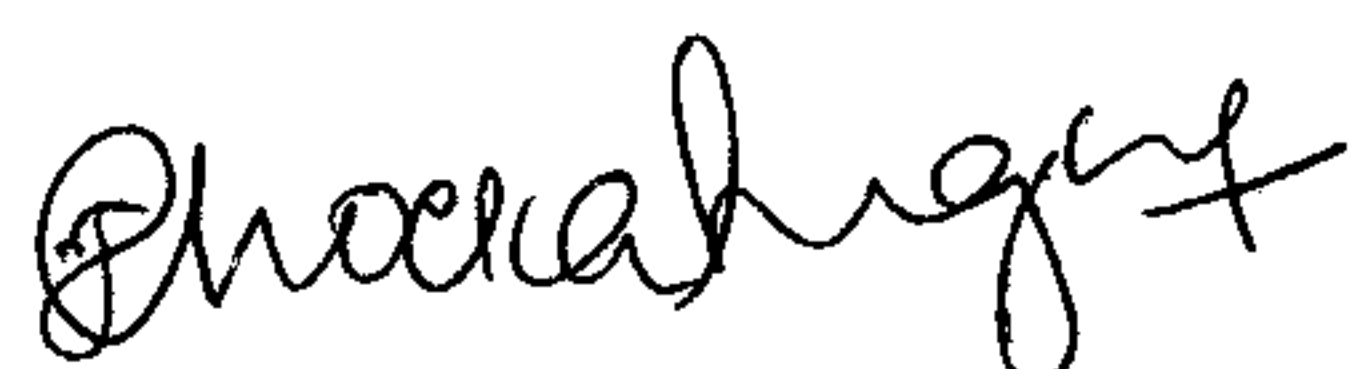
Section : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	JAIMIN R. DAVE HIRVA R. DAVE	} ADVOCATE	PETITIONER	
2.				

ORDER

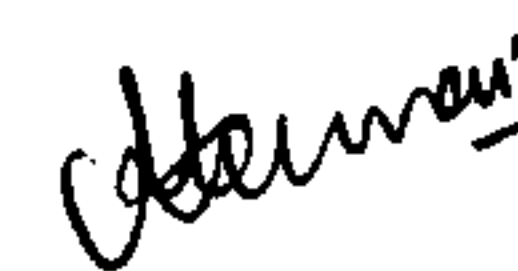
The Petitioner is represented through learned counsel.

The Order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 12th day of March, 2020



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 32/9/NCLT/AHM/2019

In the matter of:

M/s. United Media Works Private Limited
Unit No. 501, 'B' Wing
Building No. 42
Azad Nagar,
2nd Off, Veeer Desai Road
Andheri (W)
MUMBAI 400 053

Petitioner
Operational Creditor

Versus

M/s. Khushi Advertising Ideas Private Limited
8, Deepawali Centre,
Opp. Old High Court
Income Tax Under Bridge
Ashram Road
AHMEDABAD 380 014
Gujarat State

Respondent
Corporate Debtor

Order delivered on 12th March, 2020.

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

Advocate Mr. Jaimin R. Dave with advocate Mr. Priyank Dave and Ms. Hirva R. Dave for applicant.
Sr. Advocate Mr. Devang Nanavati along with Advocate Ms. Prachiti Shah and Advocate Mr. Urjit Dave for respondent.

ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. The instant application is filed by Mr. Amol Arun Gadge, being director of M/s. **United Media Works Private Limited** under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.





2. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 22.02.2013 having identification No. U22100GJ2013PTC073693 and having registered office at Ashram Road, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 7,50,00,000/- and paid up share capital is Rs. 5,00,00,000/-.
3. The applicant/operational creditor, a private limited company having its registered office at Mumbai is an advertising agency for arranging, managing and sourcing advertisers and contracts for playing on screen advertising.
4. The applicant/operational creditor has stated that a Memorandum of Understanding (MOU) was entered into between the operational creditor and corporate debtor on 1st April, 2014 valid for a period of three years i.e. till 31st March, 2017 whereby the corporate debtor had engaged the operational creditor for arranging, managing and outsourcing advertisers. That, under the aforesaid arrangement, corporate debtor utilised operational creditor's theatres for screening of advertisements of the corporate debtor's clients. Accordingly, the corporate debtor issued release orders on every advertisement booked and subsequent to which the operational creditor raised invoices on the corporate debtor on the first day of each month for the preceding month. That, under the terms of the MOU, the corporate debtor is required to release the monthly payment within a period of 30 days.
5. The operational creditor has further stated that during the period 2014 to 2017, operational creditor provided the best services to run the advertisements in the theatres of the operational creditor adhering the requirements and time schedule. That, the operational creditor also provided



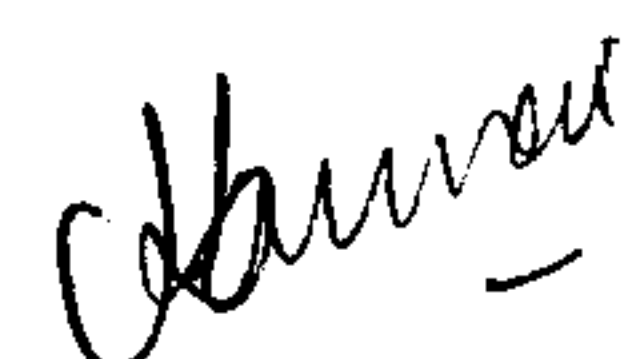

exhibition certificates with respect to the services that were provided and completed as per the release orders issued by the corporate debtor. Pursuant to the above, operational creditor raised several invoices in respect of the services provided by the operational creditor.

6. The operational creditor has further claimed that during such period of business between the corporate debtor and operational creditor, the corporate debtor had issued several debit notes against the invoices issued during the three years on the pretext of deductions made in amounts against the bills raised, by one of their valued customers viz. Directorate of Advertising and Visual Publicity (DAVP) due to alleged discrepancy in the log reports. That, the said amounts raised under the debit notes have not been accounted for in the claims being made by the operational creditor under this notice. That, the debit notes were raised after two years of billing.
7. The operational creditor has further submitted that due to failure and refusal on the part of the corporate debtor to settle outstanding dues of the operational creditor for the past more than three years, the operational creditor issued a statutory notice dated 25.10.2018 under the provisions of I & B Code. Thereafter, letter dated **25.10.2018** along with demand draft for Rs. 40,50,389/- was received from the corporate debtor as revenue shared with the operational creditor in lieu of payment received from the corporate debtor's customers and stating that no more outstanding is pending to be recovered from the corporate debtor.
8. It is further stated by the operational creditor that on receipt of above referred letter and payment, operational creditor issued a reply letter dated 01.11.2018 disputing the statement of the corporate debtor with respect to pending



invoices and interest incurred thereon. That, despite issuance of letter dated 01.11.2018, no response was received from the corporate debtor with respect to the payment of pending dues. Therefore, the operational creditor was constrained to issue another statutory demand notice under section 8 of the I & B Code in form 3 on 19.11.2018.

9. It is further stated by the operational creditor that the corporate debtor has made only part payment of Rs. 1,20,89,598/- till date and the corporate debtor has failed to clear the balance outstanding payment of **Rs. 93,11,660/- (Rupees ninety-three lacs eleven thousand six hundred sixty only)** plus interest @ 18% per annum totally amounting to **Rs. 1,49,77,068/- (Rupees one crore forty-nine lacs seventy-seven thousand sixty-eight only)**.
10. It is alleged by the operational creditor that despite repeated reminders/communication, the corporate debtor has failed to clear the operational debt. That, the operational debt has fallen due on 14th December, 2015 as per the computation of default annexed to the application (page 764-768).
11. In support of its claim, the operational creditor has annexed to the application, copy of all relevant documents like copy of invoices, demand notice, affidavit in support of the application, proof of service, computation showing the details of outstanding, correspondence between the two parties requesting to release payments, e-mail communication, ledger account maintained by the operational creditor, affidavit to the effect that no notice of dispute has been given by the corporate debtor in respect of the unpaid operational debt etc.



12. The respondent/corporate debtor filed affidavit in reply inter alia stating that the petition is not maintainable since the invoices claimed as outstanding by the operational creditor are either paid or adjusted against the debit notes. That, the applicant has suppressed many material facts and has made false statements. Further, the aforesaid MOU was valid upto 31st March, 2017. However, the corporate debtor has been releasing their share in the revenue upon actual realization of bill amount from their customers and as per the MOU looking to the business relations and the said revenue is calculated after deducting applicable taxes.

13. The corporate debtor has further stated that pursuant to a meeting held at Mumbai office of the corporate debtor, demand draft for Rs. 40,50,389/- was issued in favour of the operational creditor towards the share of the operational creditor i.e. 75% as per the MOU. That, the said demand draft for Rs. 40,50,389/- was given by the corporate debtor with letter dated 25.10.2018 clearly specifying that there is no outstanding amount pending and/or payable by the corporate debtor.

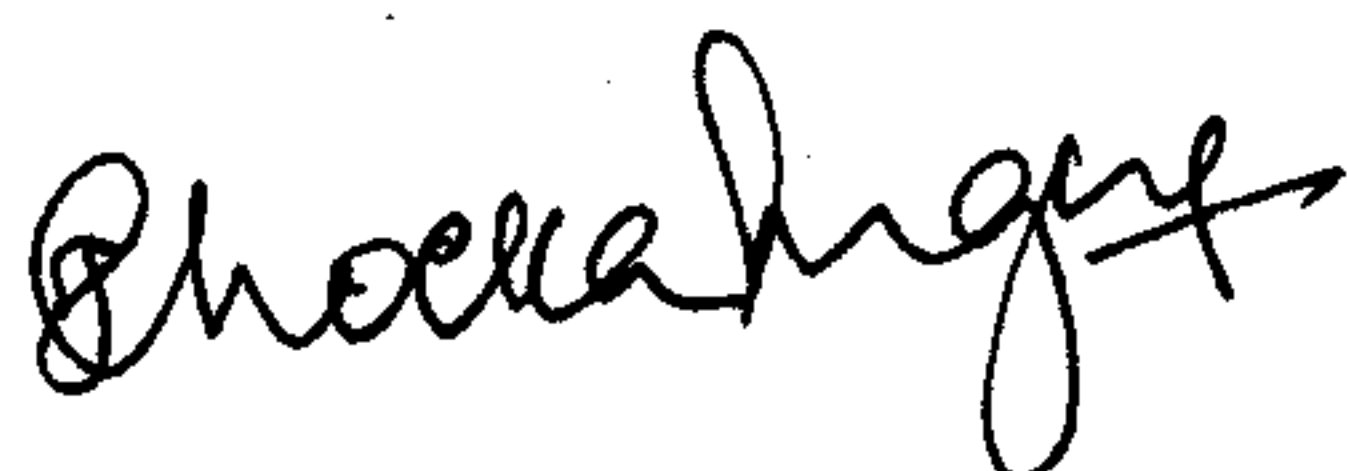
14. The corporate debtor has further stated that, as per the MOU the operational creditor was under obligation for screening of advertisements as per the time schedule to be maintained as per the instructions received from DAVP and any default in screening of the advertisements, its timing, duration etc. would lead to certain deductions in amounts from the bill of operational creditor. That, DAVP having found discrepancy in the log reports due to wrong screenings and/or mismatch in the log reported submitted by the operational creditor, had released less payment to the corporate debtor against the actual bill raised.

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Findings

15. Heard learned counsels appearing on behalf of both the sides and perused the documents attached to the application/reply.
16. On perusal of the records it is found that the first demand notice under section 8 of the I & B Code was issued by the operational creditor on 09.04.2018 (page 750 of the petition) which is replied by the respondent on 24.04.2018 inter alia raising various disputes (page 32-33 of reply) regarding the debit notes raised by the corporate debtor on the operational creditor.
17. On perusal of the records it is also found that the second demand notice (page 565) issued by the operational creditor on 25th October, 2018, is also replied by the corporate debtor on 25th October, 2018 (page 583) itself forwarding therewith a demand draft of Rs. 40,50,389/- towards the share of 75% received from the clients of the corporate debtor. In the said letter (page 584) the corporate debtor has categorically stated that "in view of the same (payment of Rs. 40,50,389) there is no outstanding amount pending to be recovered and/or payable to you (operational creditor)". Record shows that the operational creditor vide letter dated 1st November, 2018 (page 586) had replied the letter of corporate debtor on 25th October, 2018 inter alia **denying and disputing** the statement made by the corporate debtor. Letter dated 1st November, 2018 issued by the operational creditor has been again disputed by the corporate debtor vide its letter dated 22nd November, 2018 (page 696). From the above it is evident that there is/are pre-existing dispute



prior to issuance of the last/third demand notice issued by the operational creditor.

18. As regards sharing the revenue in ratio of 75:25 is concerned, it is desirable to refer to para 2 and para 8 of the MOU dated 1st April, 2014 entered into between the parties. For the sake of brevity, para 2 and para 8 of the MOU is reproduced here under: -

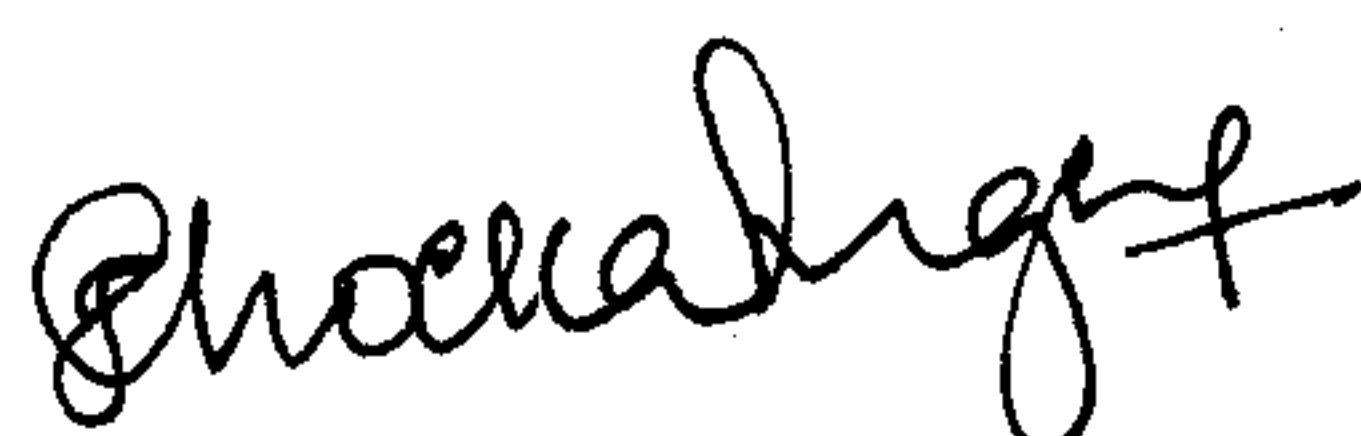
"2. The ad agency shall provide release order along with each and every advertisement booked with duration and second age etc. The company shall raise the invoice to the Ad Agency on 1st day of each calendar month for all advertisements booked in the preceding month.

8. The Ad Agency shall and the Company shall share the revenue in ratio of 75:25 i.e. 75% of net revenue will be share of the company & 25% of net revenue will be of the Agency. Net revenue will be calculated after deducting taxes applicable (if any) or any other deductions"

19. That apart, the MOU was executed in April, 2014 whereas the application is filed on 12th December, 2018, much after the expiry of three years. Thus, the claim, if any, on the basis of MOU dated 01.04.2014 itself is time barred in view of section 18 of the Limitation Act which reads as under: -

18. Effect of acknowledgment in writing - (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

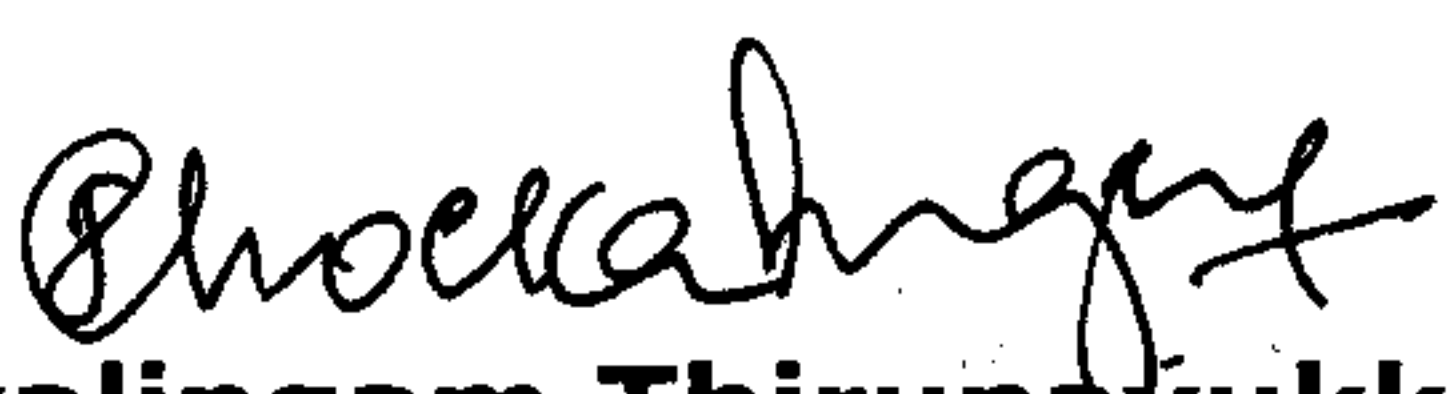
20. On perusal of the records it is also found that form 5 is not complete and the notary has not signed/initialled the documents including form No. 5 to the petition as required under sub-rule 2 of Rule 23 of the NCLT Rules, 2016 which reads as under: -

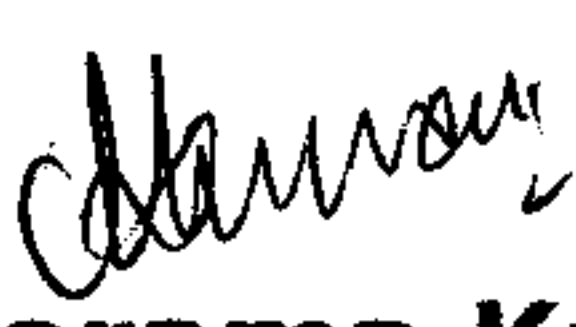




Rule 23 (3) of NCLT 2016 – Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application duly verified from original.

21. On perusal of the record it is found that none of the documents are duly verified as per NCLT Rules and notary's initials are also not found. As such, the form 5 is incomplete.
22. That, the applicant has failed to establish that the company is insolvent which warrants resolution plan. On perusal of the records it is found that the company is sound and a going concern. Under such circumstances the I& B Code does not attract, more so, when it is established that there is pre-existing dispute and the amount so claimed by the applicant is not crystalized.
23. Under the facts and circumstances as discussed in sequel herein above, the application, so filed by the applicant is not maintainable and is bad in law as well as in facts.
24. However, this will not stand in the way of the Petitioner invoking the appropriate forum seeking to enforce its claim as against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration of the provision of IB Code, 2016. The observations made by us on any other aspect would not constitute an expression of opinion on the merit of controversy.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)