



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 313/Chd/Hry/2019

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

Amatya Business Consulting Pvt. Ltd.

having their registered office at
407, 4th Floor, Pearls Business Park,
Netaji Subhash Place, Pitampura
Delhi-110034
CIN: U74900DL2012PTC238499

...Petitioner-Operational Creditor

Vs.

Health Biotech Limited

having its registered office at
SCO 162-164, Indian Airlines Towers
Top Floor, Sector-34-A
Chandigarh- 160036
CIN: U24233CH2001PLC024356

...Respondent-Corporate Debtor

Judgement delivered on: 09.02.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner- : Mr. Krishan Vrind Jain, PCS
Operational Creditor

For the Respondent- : Mr. Nitin Kaushal, Advocate
Corporate Debtor



Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Amatya Business Consulting Pvt. Ltd.** through its General Manager (Finance), Mr. Raghuvir Mardolker (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **Health Biotech Limited** (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Health Biotech Limited, is a Company incorporated on 02.12.1992 under the provisions of the Companies Act, 1956 with CIN: U24233CH2001PLC024356 with its registered office at SCO 162-164, Indian Airlines Towers, Top Floor, Sector-34-A, Chandigarh- 160036, India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure A13

3. The facts of the case, briefly, as stated in the petition are that the Operational Creditor raised invoices upon various buyers including Corporate Debtor towards the consultation services. In the books of accounts maintained by the Operational Creditor Rs. 27,14,000/- was outstanding upon Corporate Debtor. Since 07.02.2019, the Corporate Debtor failed to pay the outstanding amount.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 27,14,000/- (Rupees Twenty-Seven Lakhs Fourteen Thousand Only) The default occurred on 07.02.2019



i.e.when the bill was raised and sent to Corporate Debtor. Copy of invoices (Annexure-4), Ledger Accounts Statement (Annexure-5), Agreement with Health Biotech Limited (Annexure-10), Statement of Bank Account (Annexure-11) is attached with the main petition.

5. A demand notice is stated to be issued by the operational creditor on 03.04.2019 and the same was delivered as the postal receipts and tracking report are attached at Annexures- 7 and 8 with the main petition. The corporate debtor gave a reply dated 10.04.2019 to the demand notice wherein it was stated that as per Clause 7 of the Agreement, the agreement was valid for a period of 6 months from the date of the agreement and the responsibilities including disbursement of amounts from banks/ financial institution were to be performed within stipulated period of 6 months starting from 06.06.2017 and ending on 05.12.2017 i.e. the validity of the Agreement. The Operational Creditor failed to perform such duties within the stipulated time and after the expiry of the agreement the Corporate Debtor had no relation to the said services.

6. Notice of this petition had been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed by Diary No. 4243 dated 21.08.2019. The corporate debtor filed a reply vide Diary No. 925 dated 04.02.2020, wherein it is stated that the documents filed with the application are not original and cannot be accepted for the purpose of the present application. The corporate debtor vide its reply to the notice has denied the outstanding amount and had challenged the basis of the issuance of the invoice dated 07.02.2019. The agreement was for the period of 6 months from 06.06.2017 to 05.12.2017, there was no



agreement between the parties subsequent to the aforementioned agreement and the claim is based upon an invoice dated February,2019. The application does not disclose any details of the transaction on account of which the debt fell due. As per Clause 3 no agreement much less disbursement of loan amount could be arranged by the Operational Creditor within the contract period. As per Clause 4 the advance fee already stands paid to the applicant and the same has been duly admitted by the applicant. The claim is based on the invoice which is raised more than 15 months from the expiry of the agreement, in the absence of an agreement the applicant is precluded from raising any demand. The invoice has been raised for professional charges for consulting services relating to funding of one-time settlement. The invoice appears to be raised in lieu of a success fee of Rs.25 lakhs. The Operational Creditor sent an email dated 07th February claiming a successful payment of OTS dues to SBI which was a malicious intent to raise a claim. It is further submitted that there is a pre-existing dispute between the parties.

7. The rejoinder was filed vide Diary No.00146/1 dated 09.02.2021, wherein it is stated that the respondent failed to make payment for the services rendered by the applicant. All the documents have been duly certified by the Authorized Representative of the applicant. If the applicant failed to accomplish its commitment and raised invoices after the validity of the mandate came to an end then no loan could ever be sanctioned to Corporate Debtor as it was sanctioned after the validity period of the mandate. The applicant was obliged to raise its bill for the balance amount only after the disbursement of the loan amount in terms of the mandate i.e. Rs.



27,14,000/- (Clause 4 of the agreement). The applicant raised bills in 2019 for a mandate entered in the year 2017. It is further submitted that the existence of disputes raised by the respondent was after the issuance of the demand notice and not at the time of availing services of the applicant.

8. The short written submissions have been filed by Petitioner-Operational Creditor vide Diary No.00146/4 dated 26.10.2022 and by Respondent-Corporate Debtor vide Diary No.00146/3 dated 13.06.2022.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The issues for consideration are:-

- i. *Whether or not the present application discloses any details of the transaction on account on which the operational debt fell due?*
- ii. *Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid ?*
- iii. *Whether or not there is any pre-existing dispute between the parties?*

i. Whether or not the present application discloses any details of the transaction on account on which the operational debt fell due?

It is submitted that no transaction has been provided by the applicant to show as to how the amount is being claimed fell due. The claim was based upon the invoice raised more than 15 months from the expiry of the agreement without having entered into any subsequent agreement for providing any consultancy service. In absence of the agreement, the Operational Creditor is precluded from raising any demand/ invoice upon the



Corporate Debtor. The invoice had been raised for a consulting service relating to funding of One Time Settlement. The invoice appeared to be raised in lieu of success fee of Rs. 25 lakhs. There was no successful transaction entered at the behest of the applicant till 05.12.2017.

ii. Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid ?

The agreement was entered into between the parties for the period of six months commencing from 06.06.2017 to 05.12.2017. As per Clause 3 of the agreement the Operational Creditor has certain responsibilities. The remuneration was to be paid as per Clause 4 of the Agreement. The applicant failed to perform his responsibilities and no agreement much less disbursement of loan amount could be arranged by the applicant within contract period i.e. till 05.12.2017. As per clause-4, the advance fee already stands paid to the operational creditor and the same has been duly accepted by the Operational Creditor. As per the agreement dated 06.06.2017, the terms and conditions between the parties were set out. The Clause 7 clearly provides that "*Termination- The Agreement with AMATYA and will be valid for a period of 6 months commencing from the date of this Agreement*".

The claim was based upon the invoice raised more than 15 months from the expiry of the agreement without having entered into any subsequent agreement for providing any consultancy service. In absence of any fresh agreement, the Operational Creditor is precluded from raising any demand/ invoice upon the Corporate Debtor. The invoice had been raised for a consulting service relating to funding of One Time Settlement. The invoice



appeared to be raised in lieu of a success fee of Rs. 25 lakhs. There was no successful transaction entered at the behest of the applicant till 05.12.2017. Moreover, respondent had availed consulting services, but the invoice had been raised for professional charges for consulting services relating to funding of one-time settlement. The invoice appeared to be raised in lieu of a success fee of Rs.25 lakhs. Therefore, the documentary evidence furnished with the application fails to show that the aforesaid debt is due and payable and has not yet been paid.

iii. Whether or not there is any pre-existing dispute between the parties?

The Corporate Debtor vide its reply to the demand notice dated 10.04.2019 denied any liability towards the applicant and raised a dispute regarding the invoice dated 07.02.2019. The existence of dispute under Section 8(2)(a) of the Code stands settled by the **Hon'ble Supreme Court of India in the case of Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353**, wherein it was stated that:-

“38. It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational creditor the existence of a dispute, if any. We have also seen the notes on clauses annexed to the Insolvency and Bankruptcy Bill of 2015, in which “the existence of a dispute” alone is mentioned. Even otherwise, the word “and” occurring in [Section 8\(2\)\(a\)](#) must be read as “or”



keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as “or”. If read as “and”, disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise. This would lead to great hardship; in that a dispute may arise a few days before triggering of the insolvency process, in which case, though a dispute may exist, there is no time to approach either an arbitral tribunal or a court. Further, given the fact that long limitation periods are allowed, where disputes may arise and do not reach an arbitral tribunal or a court for upto three years, such persons would be outside the purview of [Section 8\(2\)](#) leading to bankruptcy proceedings commencing against them. Such an anomaly cannot possibly have been intended by the legislature nor has it so been intended. We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists between the parties”.

In light of the above judgment, the creditor raised an invoice relying on the agreement dated 06.06.2017 which expired on 05.12.2017. Therefore, the invoice raised is without any transaction/service delivery and cannot be a ground for initiation of CIRP. The present application is not maintainable inter-alia due to a pre-existing dispute between the parties as well as no explanation/ details forthcoming as to the basis of the invoice dated 06.06.2017.



11. In the given facts and circumstances, the petition is liable to be rejected, in terms of Section 9 of IBC, 2016. Therefore, the claim of the petitioner is rejected and the petition stands dismissed, however, without any order to the costs.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

February 09, 2023

SM/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)