IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT NO. II)
KOLKATA

Company Petition C.P. (IB)/1492/KB/2019

A Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 to initiate corporate insolvency resolution process in respect of Edubridge Learning Private Limited

IN THE MATTER OF:

HEMANT PANDEY, Address of the registered office: C 18, 2nd Floor, Punjab Co-Operative Housing Society, Tagore Road, Santacruz West, Mumbai – 400054.

…… Operational Creditor/ Applicant

Verses

EDUBRIDGE LEARNING PRIVATE LIMITED, a Company incorporated under the provision of the Companies Act, 1956, and having its registered office at 1/1, Pollock Street Kolkata, West Bengal – 700001 and bearing CIN: U80220WB2009PTC138864, incorporated on October 13, 2009.

….. Corporate Debtor/ Respondent

Date of Hearing: December 13, 2022

Date of Pronouncement of the Order: April 18, 2023

CORAM:

Smt. Bidisha Banerjee, Hon'ble Member (Judicial)
Shri Balraj Joshi, Hon'ble Member (Technical)

Counsel/ Authorised Representative appeared through Physically/Video Conference:

Mr. Nikhil Mengde, Adv.	**] For the Operational Creditor**
Mr. Shaunak Mitra, Adv.	**] For the Corporate Debtor**
Mr. Saptarshi Saha, Adv.	**]**
Mr. Arindam Mrinal Pal, Adv.	**]**

O R D E R

Per: Balraj Joshi, Member (Technical)

1. This Court was convened through hybrid mode.

2. This instant Petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by one **Mr. Hemant Pandey**, hereinafter referred as **Operational Creditor/ Applicant** against **Edubridge Learning Private Limited**, hereinafter referred as **Corporate Debtor/ Respondent,** seeking to initiate insolvency resolution process against the Respondent for default on payment of agreed commission on achieving the sales targets.

3. The Corporate Debtor is a private limited company incorporated on October 13, 2009. The authorized share- capital of the company is ₹10,00,000/- and the paid-up share-capital of the company is ₹6,88,140/-

4. Details of the computation of amount in default:

Date	Particulars	Amount (Rs.)
____	Target for the Financial Year 2017 (10th August, 2016 to 31st March, 2017)	1,23,00,000/-
31/03/2017	Sales achieved	2,85,96,263/-
____	Excess achievement of Sales	1,62,96,263/-
____	15% Commission on Rs. 1,62,96,263/-	24,44,439.45/-
____	Round off	24,44,439/-
____	**Amount in Default**	**24,44,439/-**

5. Operational Creditor has relied on the following documents in support of its claims:

i. **Annexure 1:** Amount in default Rs. 24,44,439/- Computation of Amount.

ii. **Annexure 2:** A Statement of Bank Account where deposits are made, or credits received normally by the Operational Creditor in respect of Debt;

iii. **Annexure 3:** Copy of Offer Letter dated 19th May 2015;

iv. **Annexure 4:** Copy of the Confirmation Letter along with the Appointment Letter dated 10th November 2015;

v. **Annexure 5:** Copies of Conversation over emails;

vi. **Annexure 6:** Copy of the recovery Notice dated 2nd April 2018 and proof of Delivery;

vii. **Annexure 7:** Copy of response received by Applicant to the Recovery Notice dated 15th May 2018;

viii. **Annexure 8:** Copy of the Demand Notice dated 10th May 2018;

ix. **Annexure 9:** Copy of proof of receipt of Demand Notice;

x. **Annexure 10:** Copy of extracts of the Respondent Company available on the website of the Ministry of Corporate Affairs;

xi. **Annexure 11:** Certificate of Financial Institution as per the provisions of Section 9(3) (c) of the Insolvency and Bankruptcy Code, 2016;

6. **Submission by the Ld. Counsel appeared on behalf of the Applicant**:

6.1 The Ld. Counsel for the Operational Creditor states that the Applicant is appointed as Assistant Vice President Corporate Sales on 10/11/2015 by the Edubridge Learning Private Limited, the Corporate Debtor.[1] Applicant has been given the offer of employment by the Corporate Debtor (Respondent) under the signature of Manager Human Resource on 19/05/2015.[2]

6.2 It is further stated that as per the offer letter dated 19/05/2015 the Applicant will be entitled to **15% Commission / Incentives for sales exceeding Rs. 1.2 Crore** (The only pre-condition for payment of incentives). The Applicant commences his employment from 10/8/2015. The target given to the Applicant by the Corporate Debtor was Rs. 1.23 Crore for the period 10/8/2016 to 31/3/2017. The target has been achieved by the Applicant by generating sales of Rs. 2,85,96,263/- (Rupees Two Crores Eighty-Five Lakhs Ninety-Six Thousand Two Hundred and Sixty-Three Only) i.e., 1,62,96,263 /- (One Crore Sixty-Two Lakhs Ninety-Six Thousand Two Hundred and Sixty-Three Only) more than the given target. Hence as per the offer letter the Applicant is entitled to 15% Commission / Incentive on Rs. 1,62,96,263 /-

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1. **Annexure-4** annexed to the Company Petition at Page 35-39.
2. **Annexure-3** annexed to the Company Petition at Page 33-34.

comes to INR 24,44,439.45 (Twenty-Four Lakhs Forty-Four Thousand Four Hundred and Thirty-Nine Only) for sales done up to 31st March 2017.

6.3 It is stated and annexed that the Operational Creditor have the conversation with the Corporate Debtor through email regarding payment the incentives. On September 12, 2016, through mail, the Corporate Debtor mentions the Operational Creditor that:

"*As discussed with you, your target for the period 10th August, 2016 – 31st March, 2017 is as follows:*

Your CTC for the corresponding period – Rs. 12.37 Lacs

Your Revenue Target for the above-mentioned period is – Rs. 1.23 Cr.

Please note that the revenue target will be calculated on the basis of money collected from clients."[3]

Further, the Operational Creditor on December 08, 2017 through email to the Corporate Debtor states that:

"*As per the below trail mail; sales is recognized on invoicing as well as on collection. In this case the entire money from Citibank Rs. 2,33,61,075/- was received on 30th March 2017 in Udyogini's (Edubridge NGO partner) bank account. As per Udyogini and you; they had wrongly credited the entire funds to Udyogin's FCRA account on 30th March and post your's and Udyogini's instructions the money was re-credited back to Citibank's account on 31st March 2017.*

1st April and 2nd April was a Bank Closing/Holiday and Citibank re-transferred the entire funds on 3rd April to Udyogin's NON-FCRA bank account and on 4th April it was credited into Edubridge's bank account. In this entire incident I have taken all the possible steps/actions to receive the money from the client. But it seems I am getting penalized on my incentives due to no fault of mine.

Also you had made a commitment to me and the entire sales team that even if we receive the money by 30th April 2017 from any corporate client towards the business, the sales will be recognized for this financial year 16-17 and on records entire funds was received in Edubridge account on 4th April 2017. As per your commitment I am entitled for the incentives as per the trail mail below. As an

3. Page 43 of the Company Petition.

employee I have fulfilled my commitment now request you to honor your commitment." **[4]**

The Corporate Debtor on December 12, 2017 through mailed to Operational Creditor submits that:

"*1. It is very clear from the target roll-out mail that for the purposes of Calculating your incentives, the revenues for FY 17 will be considered as per the money collected from clients up to* ***31st March, 2017****. Therefore, no money collected after this date can be a part of incentive calculation for the concerned period. Please bear in mind that this will only be calculated as per the date by when the funds are received by Edubridge.*

2. Therefore, as per this, you are not entitled to any incentives for the financial year ending 31st March, 2017.

3. However, due to your repeated requests, and in good faith, the organization decided to make an exception and award you and incentive of approximately Rs. 3 Lacs. This was conveyed to you very clearly to make in person several months"**[5]**

6.4 The Ld. Counsel further contends that the notice dated April 02, 2018 sent by the Applicant to the Respondent and the Respondent has given response on May 15, 2018. In the Recovery notice by the Applicant, it is contended that:

"*Further the contents of this contention are carefully perused, the Founder and CEO is himself stating that the incentive of 3 lakhs was not paid to my client since he did not 'confirm' the same. It is very perplexing to understand as to how such a confirmation would be given where admittedly there was a dispute of the incentive payable. My client states that if in fact the intentions of the company were genuine, the Company would have paid the said amount of 3 lakhs pending resolution of the dispute in 'good faith' and not subjected it to confirmation as is being purported. Therefore, upon considering this it is clear that the Company did not have any*

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4. Page 41 of the Company Petition.
5. Page 40 of the Company Petition.

genuine intentions and the true intentions were to brow beat my client to accept the said paltry amount of INR 3 lakhs as against the said amount actual incentives."[6]

The Reply to the Notice dated April 02, 2018 has been given by the Respondents through their Authorized Representative on May 15, 2018, submitting that:

"*With reference to the contentions and/or allegations in paragraphs 21 to 22 of your notice dated April 02, 2018, save as appears from matters of undisputed records, other statements contained therein are denied seriatim. Our Client represents and warrants that no formal extension was provided to its employees in terms of collection realisation of professional fees beyond March 31, 2017 for FY 2016-17 as claimed by your client. Our Client also confirms and reaffirms the fact that no part of professional fees, due-and payable from M/s Citicorp Financials Services, was ever received by the company within 2016-17. Admittedly, your client has not only failed in achieving his financial target for FY 2016-17, but is also not eligible to receive any incentive/ compensation for the FY 2016-17. Accordingly, your client's alleged claim of Rs. 24,44,439/- (Rupees Twenty-Four Lakh Forty-Four Thousand Four Hundred and Thirty-Nine Only) along with interest is illegal, illegitimate and not justified and appears to be currently pursued to illegally enrich himself and usurp the hard-earned money of our client*."[7]

6.5 Further, it is submitted by the Ld. Counsel appearing for the Petitioner that a Demand Notice under Section 8 of I&B Code, 2016 read with Rule 5 of the I&B (Application to the Adjudicating Authority) dated 10/05/2018 has been sent to the Corporate Debtor through Mr. Nikhil Mengde, Adv. (the Authorized person act on behalf of the Operational Creditor) demanded the amount of Rs. 24,44,439/-, default dated 31st March, 2017. The said Demand Notice has been sent through speed post-dated 16/05/2018, there is receipt of confirmation of delivery on 17/05/2018. The copy of the Demand Notice dated 10/05/2018 is annexure to the Company Petition being

6. Page 54 of the Company Petition.
7. Page 66 of the Company Petition.

Annexure 8 at Page 75-78 and the Copy of proof of receipt of demand notice is annexed to the Company Petition being **Annexure "9"** at Page 79-80.

7. **Submission by the Ld. Counsel appeared on behalf of the Respondent through Affidavit in Reply to the Application**:

7.1 The Ld. Counsel for the Corporate Debtor/ Respondent submits that the Operational Creditor/ Applicant agreed to receiving "Incentives" under the Clause "Compensation" of the said Appointment letter dated August 10, 2015 which clearly provides as follows:

"*In addition to fixed compensation, you shall be eligible for performance linked incentives as may be decided by the Company from time to time. As per the Company policy, all performance incentives are payable at the <u>Company's discretion</u> and only if the employee is on rolls of the Company when the actual payment is made and the employee should not have submitted his resignation...*" [8]

7.2 It is stated that the Corporate Debtor/Respondent had a clear prevalent policy and robust guideline concerning declaration of performance linked incentives which provided that calculation and accomplishment of the financial targets for an employee vis-a-vis any financial year was directly proportional to the money collected from clients during the course of the same year.

7.3 It is further stated that the Applicant is well aware of the contents of the email dated December 12, 2017 sent by Mr. Girish Singhania (Founder & CEO) to the Applicant as:

"*1. It is very clear from the target roll-out mail that for the purposes of Calculating your incentives, the revenues for FY 17 will be considered as per the money collected from clients up to **31st March, 2017**. Therefore, no money collected after this date can be a part of incentive calculation for the concerned period. Please bear in mind that this will only be calculated as per the date by when the funds are received by Edubridge.*

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8. Page 4 of the Affidavit in Reply to the Application.

2. Therefore, as per this, you are not entitled to any incentives for the financial year ending 31st March, 2017."

7.4 It is further stated that all the alleged claims of incentive/ commission by the Applicant is bad in law and suffers from gross lack of good judgment. The Corporate Debtor confirms and states that the Operation Creditor has fallen way short of achieving financial target of what was least expected to be achieved by him in both FY 2015-16 and FY 2016-17. A perusal of email date December 12, 2017 sent by Mr. Girish Singhania (Founder and CEO) to the Operational Creditor/ Applicant further reflects that the Corporate Debtor had supported him and adopted a very lenient approach despite his sub-par performance in the Corporate Debtor during the FY 2015-16 and FY 2016-17. Copy of the Email dated December 12, 2017 is annexed to and marked as Annexure D at Page 20 of the Affidavit in Reply.

7.5 The Operational Creditor/ Applicant has raised the claim for a sum of Rs. 24,44,439 by his letter dated April 02, 2018 (being Annexure "6" of the instant application preferred by the Operational Creditor/ Applicant under Section 9 of the I&B Code, 2016). However, such claim was disputed by the Corporate Debtor/ Respondent vide letter dated may 15, 2018 (being Annexure "7" of the said application preferred by the Operational Creditor/ Applicant under Section 9 of the I&B Code). Letter by Corporate Debtor/ Respondent is annexed to the Affidavit in Reply being **Annexure "E"** at page 25-38.

7.6 The Operational Creditor/ Applicant herein even after having knowledge of the fact that there were pre-existing disputes between the parties herein had sent a notice under Section 8 of the I&B Code, 2016. However, such notice has duly been replied to the Operational Creditor by the Corporate Debtor (through Advocates) by way of a letter dated May 24, 2018 which specifically disputes the amount claimed in the notice under Section 8 of the I&B Code, 2016 and the said letter is received by the Authorized person appointed by and acted on behalf of the Operational Creditor). It is contended in the reply letter to the Operational Creditor by Corporate Debtor that: "*In relation to the aforesaid, our client denies and disputes all alleged calculations submitted by your client in relation to payment of unpaid "operational debt"* *detailed out Annexure A of your notice, dated May 10, 2018. Our client asserts and affirms that no part of performance linked incentive (in the form of over achievement of financial target) is due and payable to your client in FY 2016-17 as he had miserably failed in achieving financial targets prescribed by the Company for FY 2016-17. Accordingly, your client's alleged claim of Rs. 24,44,439- (Rupees Twenty-Four Lakh Forty-Four Thousand Four Hundred and Thirty-Nine Only) along with interest as unpaid operational debt is illegal, illegitimate and not justified and appears to be currently pursued to illegally enrich himself and usurp the hard-earned money of our client*."

The Copy of the Letter dated May 24, 2018 in annexed to the Reply in Affidavit being **Annexure "F"** at page 39-48.

7.7 Further, the Respondent denies that the offer letter, dated May 19, 2015 issued by the Corporate Debtor/Respondent in favour of the Operational Creditor/ Applicant specifically stated that the Operational Creditor/ Applicant is specifically entitled to 15% commission and that he was entitled to receive incentives for the sale exceeding Rs.1,20,00,000/- (Rupees One Crores and Twenty Lakhs Only) as alleged at all. In this regard, it is stated that payment of the commission incentives was purely discretionary in the hands of the Corporate Debtor/Respondent and subject to fulfilment of annual financial targets set by the Corporate Debtor/Respondent for the Operational Creditor/ Applicant. It is denied that the financial target set to the Operational Creditor/ Applicant by the Corporate Debtor/Respondent was Rs. 1,23,00,000/- (Rupees One Crore and Twenty-Three Lakhs Only) for the period August 10, 2016 to March 31, 2017 as alleged or at all. It is denied that the financial target by the Corporate Debtor/Respondent was comprehensively achieved by the Operational Creditor/ Applicant by generating sales of Rs. 2,85,96,263/- (Rupees Two Crores Eighty-five Lakhs Ninety-Six Thousand Two Lakhs Ninety-Six Thousand Two Hundred and Sixty - Three only) which was more than the given financial target set by the Corporate Debtor/Respondent for the Applicant as alleged or at all. It is denied that hence, as per the offer letter the applicant is entitled to 15% commission/incentive on Rs. 1,62,96,263/- (Rupees One Crore Sixty-Two Lakhs

Ninety-Six Thousand Two Hundred and Sixty-Three Only) comes to INR 24,44,439.45/- (Rupees Twenty-Four Lakhs Forty-Four Thousand Four Hundred and Thirty-Nine Point Forty-Five Paise Only) for sales done up to 31st March, 2017 as alleged or at all.

7.8 It is further denied that the amount in default is Rs. 24,44,439/- ((Rupees Twenty-Four Lakhs Forty-Four Thousand Four Hundred and Thirty-Nine Only) as alleged or at all. The contents of the documents as mentioned in paragraph 9 of the said application are all denied. It is further stated that the reliefs as claimed in the said application are frivolous and may not be granted by this Hon'ble Tribunal. All allegations contrary to or denied in seriatim.

8. Analysis and Findings:

8.1 We have heard the submission made by Ld. Counsels appearing for the Operational Creditor and Corporate Debtor and perused record. The principal issue is whether there was a pre-existing dispute or no ?

8.2 Firstly, from the Appointment letter of the Operational Creditor/ Applicant, it is seen that provision of **all the performance incentives/ commissions are payable at company's discretion and only if the employee is on rolls of the Company when the actual payment is made and the employee should not have submitted his resignation**. Thus, the payment of performance linked incentives to its employees is always optional at the sole discretion of Corporate Debtor/ Respondent Company, subject however to the employee's compliance with the Corporate Debtor/ respondents prevalent rules and regulations, company policies and applicable standing order, at all points of time.

8.3 Secondly, we find that the correspondence that has ensued between the Operational Creditor and the Corporate Debtor by email between the Applicant and Respondent points out towards a dispute regarding the amount and payment of the claimed incentive.

8.4 Thirdly, it is seen that a Recovery Notice dated April 02, 2018 under Section 8 of I&B Code, 2016 has been served by the Operational Creditor/ Applicant to the

Corporate Debtor/ Respondent by Post on April 04, 2018. Copy of the Notice dated April 02, 2018 is annexed to and marked as **Annexure "6"** in the Company Petition at Page 47-61. In a paragraph of the said Notice dated April 02, 2018, the Operational Creditor mentioned that

"*Further the contents of this contention are carefully perused, the Founder and CEO is himself stating that the incentive of 3 lakhs was not paid to my client since he did not 'confirm' the same. It is very perplexing to understand as to how such a confirmation would be given where admittedly there was a dispute of the incentive payable. My client states that if in fact the intentions of the company were genuine, the Company would have paid the said amount of 3 lakhs pending resolution of the dispute in 'good faith' and not subjected it to confirmation as is being purported. Therefore, upon considering this it is clear that the Company did not have any genuine intentions and the true intentions were to brow beat my client to accept the said paltry amount of INR 3 lakhs as against the said amount actual incentives*."[9]

From this paragraph, it is clear that the Operational Creditor/ Applicant admits that there was a pre-existing dispute regarding the claims and that was confirmed by the Corporate Debtor/ Respondent at the first instant. The Reply to the Notice dated April 02, 2018 has given by the Respondents through their Authorized Representative on May 15, 2018.

8.5 Fourthly, it is further seen that the Demand Notice under Section 8 of I&B Code, 2016 read with Rule 5 of the I&B (Application to the Adjudicating Authority) dated 10/05/2018 has been sent to the Corporate Debtor through Mr. Nikhil Mengde, Adv. (the Authorized person act on behalf of the Operational Creditor) demanded the amount of Rs. 24,44,439/-, default dated 31st March, 2017. The said Demand Notice has been sent through speed post-dated 16/05/2018, there is receipt of confirmation of delivery on 17/05/2018. The copy of the Demand Notice dated 10/05/2018 is annexure to the Company Petition being **Annexure "8"** at Page 75-78 and the Copy of proof of receipt of demand notice is annexed to the

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9. Page 54 of the Company Petition.

Company Petition being **Annexure "9**" at Page 79-80 and such notice has been duly replied to the Operational Creditor by the Corporate Debtor (through Advocates) by way of a letter dated May 24, 2018 which specifically disputes the amount claimed in the notice under Section 8 of the I&B Code, 2016 and the said letter is received by the Authorized person appointed by and acted on behalf of the Operational Creditor). In the said Reply letter, it is contended that the Corporate debtor denies and disputes all the alleged calculations claims submitted by the Operational Creditor in relation to payment of unpaid "operational debt" mentioned in Demand letter dated May 10, 2018. The Copy of the Letter dated May 24, 2018 in annexed to the Reply in Affidavit being **Annexure "F"** at page 39-48.

8.6 In this regard we rely on **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. MANU/SC/1196/2017: (2018) 1 SCC 353**, which is a landmark judgment in regard to the pre-existing dispute amongst other points. In view of the law laid down by the Apex Court, it is very clear that we are not here to determine the merits of the dispute. We are only to see, whether there is a plausible contention which is not patiently feeble legal argument or an assertion of facts unsupported by evidence. It has been further observed that the Hon'ble Supreme Court held that the defence should not spurious, mere bluster, plainly frivolous or vexatious. A dispute should truly exist between the parties which may or may not ultimately succeed.

8.7 We find that the facts of the case are exact replica of the case relied upon and therefore without going further in the mechanics of the dispute, we conclude that there is a pre-existing dispute between then Operational Creditor and the Corporate Debtor, which is not feeble in terms of the cited case. And as a consequence, thereof, the present application under Section 9 of I&B Code, 2016, is hereby **rejected** and accordingly **dismissed**.

8.8 The Operational Creditor may, however, pursue any other legal remedy that may be available under any other law for the redressal of its grievance.

8.9 Urgent Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

Balraj Joshi	**Bidisha Banerjee**
Member (Technical)	**Member (Judicial)**

This Order is signed on the 18th Day of April, 2023

Bose R K [LRA]