NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI RATAKONDA MURALI– MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA– MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 20.11.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.419/9/HDB/2019
NAME OF THE COMPANY	Concept Public relations India Pvt Ltd
NAME OF THE PETITIONER(S)	RDP Work Stations Pvt Ltd
NAME OF THE RESPONDENT(S)	Concept Public relations India Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
D. Shravya for Ch. Siddhartha Sarma	Adv	shravyadesai@gmail.com 9666367777	D-Ue.

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
N.B. Benaijee	Advocate	9966389387	

ORDER

Today matter is listed for orders. Orders pronounced vide separate orders. CP is admitted.

Member (T) Member (J)

Syamala

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No. 419/9/HDB/2019
U/s. 9 of Insolvency & Bankruptcy Code, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016

In the matter of:

Concept Public Relations India Limited [CN]
1st Floor, Queens Mansions Prescot Road, Fort
Mumbai – 400 001, Maharashtra.

...Petitioner/Operational Creditor

VERSUS

RDP Workstations Private Limited
A Company incorporated under the Laws of India
and having its Registered Office at #5-219/16/401
Sai Veera Hill View Apartments, Puppalaguda
Near Manikonda, Hyderabad
Telangana – 500 089, India.

... Respondent/ Corporate Debtor

Date of order: 20.11.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Parties / Counsels present:

For the Petitioner : Mr.Ch. Siddhartha Sarma, Advocate

For the Respondent: Mr. Chetluru Sreenivas,
Mr. Kiran Tirunahari
Mr. N.B.Benarjee
Mr. V. Krishna Sai, Advocates

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 27.06.2019, 23.07.2019, 08.08.2019, 23.08.2019, 06.09.2019, 23.09.2019, 30.09.2019, 25.10.2019 & 13.11.2019.

ORDER

1. The Present Petition is filed by Concept Public Relations India Limited [CN],which is the Operational Creditor in this case stating that M/s. RDP Workstations Private Limited (**'RDP'**), the Corporate Debtor had defaulted the total amount of Rs.7,02,400/- (Rupees Seven Lakhs Two Thousand Four Hundred only)alongwith interest @ 24% p.a.

   Hence this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The averments of the petition filed by the Petitioner/Operational Creditor in brief are:

   i. M/s. Concept Public Relations India Limited [CN] (for brevity **'CPRIL'**)/ Operational Creditor is a Company incorporated under the Laws of India is engaged in the business of providing customer services to its clients. M/s. Concept Public Relations India Limited [CN] and M/s. RDP Workstations Private Limited (in brevity **'RDP'**) / Corporate Debtor had entered into a Public Relations Agency Contract on 01.08.2017 for the purpose of managing the strategic communication. CPRIL was appointed on a monthly retainer fee of Rs.85,000/- plus GST. Accordingly, CPRIL provided the services to RDP and raised the invoices from time to time. An amount of Rs.7,02,400/-(Rupees Seven Lakhs Two Thousand Four Hundred only) is due from the Corporate Debtor towardsservices rendered since April, 2018. The invoice details are mentioned below:

Sl.No.	Invoice No.	Date	Amount (Rs.)
1.	April/18-19/005	02.04.2018	1,00,300/-
2.	May/18-19/006	02.05.2018	1,00,300/-
3.	June/18-19/001	01.06.2018	1,00,300/-
4.	July/18-19/012	02.07.2018	1,00,300/-
5.	August/18-19/010	01.08.2018	1,00,300/-
6.	Sept./18-19/016	03.09.2018	1,00,300/-
7.	Oct/18-19/011	01.10.2018	1,00,300/-
TOTAL			**7,02,400/-**

ii. It is averred that as per the invoices, interest is to be paid @ 24% p.a. after 30 days from the date of the invoice. As no payments were received after the expiry of 30 days from the date of each invoice, the Operational Creditor issued a Demand Notice on 05.03.2019 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016.

iii. It is averred that Demand Notice sent to the registered office address of the Corporate Debtor did not get delivered and tracking details are showing the remarks as "Receiver shifted from given address". The Operational Creditor had again served the demand notice on 30.03.2019 through e-mail. At the request of Mr. Teja from Corporate Debtor, again copy of the Demand Notice was sent through e-mail on 03.04.2019.

iv. It is also averred that the Corporate Debtor sent a Response Letter dated 02.05.2019 after the expiry of 10 days statutory period, which is an afterthought and with the motive to avoid its liability. The petition is in order and it is liable to be admitted.

3. Counter filed by the Corporate Debtor in brief are as follows:

i. It is averred that the particulars of operation debt are incorrect and the Contract dated 01.08.2017 has no mention about the retainer fee. It is also averred that the Operational Creditor has failed to explain as to how the alleged total debt amount of Rs.7,02,400/- is arrived at.

ii. It is averred that the notice of demand was not issued in accordance with law and few of the invoices raised by Operational Creditor are beyond the contract period i.e. after 31.07.2018 without any valid explanation either through communication or through demand notice and there is no mention about the interest part @ 24% in the contract entered.

iii. It is averred that the Operational Creditor has utterly failed to deliver the agreed deliverables from January, 2018.

iv. It is denied that Operational Creditor had provided the services in full and Operational Creditor never adhered to the terms and conditions of the contract.

v. It is averred that the activities conducted for one year are only 26, out of 38 assured activities against the contract and e-mail dated 12.07.2017. As on date, the Operational Creditor received an amount of Rs.8,02,100/- against the activities conducted and is liable to give clarification and justification of the amount received.

vi. It is averred that the Operational Credit has to provide the plan and function according to that. But the Operational Creditor has not provided the plan and lack of co-ordination some important events / deliverables were missed because of the actions / conduct of the Operational Creditor, which was informed to the Operational Creditor by e-mail dt.27.10.2018. The desired rules are not achieved and it was accepted by the Operational Creditor by its e-mail dated 01.11.2018.

4. Affidavit in reply to the Counter filed by the Corporate Debtor, in brief are as follows:

i. It is averred that the mutual understanding and long standing relationship between the parties, the Corporate Debtor had continued to take services and accordingly Operational Creditor continued to raise invoices even after expiry of the Public Relations Agency Contract dated 01.08.2017.

ii. It is denied that the purported deliverables of 38 activities to be provided by Operational Creditor was ever agreed upon and there is no mention of the same in the contract finally entered into between the parties. It is also averred that the Corporate Debtor never raised the dispute during the contract period it started only after following up for the payment of outstanding dues.

iii. It is averred that any dispute purported to be raised by the Corporate Debtor ought to have been raised prior to the issuance of demand notice under Section 8(1) of the Code.

The contention of Applicant that there is an Order passed by the Hon'ble National Company Law Appellate Tribunal in the case between Ahluwalia Contracts (India) Limited vs. Raheja Developers Limited, dated 23.07.2019 wherein it was held that the existence of dispute must be pre-existing i.e., it must exist before the receipt of the demand notice or invoice.

iv. It is averred that the alleged disputes raised are frivolous and complete devoid of merits and have been raised with the sole intent of misleading this Tribunal.

v. It is averred that the invoices raised by the Operational Creditor towards the said retainer fee of Rs.85,000/- plus GST has been paid by the Corporate Debtor for the initial months which is provided in the ledger statement also. Thus, there exists no ground on which the Corporate Debtor can now dispute the retainer fee.

vi. It is averred that the retainer fee was not based on the deliverables.

vii. It is further averred that all the alleged disputes of Corporate Debtor are completely an afterthought, baseless and frivolous and ought to be rejected in its entirety.

5. We have heard the Counsel for Operational Creditor and also the Counsel for Corporate Debtor. Both sides filed written submissions. The points urged in the written submissions will be dealt in the course of the order.

6. Learned Counsel for Operational Creditor would contend that Corporate Debtor committed default of Operational Debt of Rs.7,02,400/- plus interest @ 24% p.a. Counsel contended the Operational Creditor and the Corporate Debtor entered into Contract dated 01.08.2017 where under Operational Creditor was engaged for the purpose of managing the strategic communication for the Corporate Debtor. The payment was on retainer basis and was fixed at Rs.85,000/- + GST to be paid in advance every month. Counsel contended Corporate Debtor made payment initially for some months but thereafter committed default from April, 2018. The Contract called Public Relations Agency Contract dated 01.08.2017 is marked as Exhibit 'D' at page No.28 to 31 of the paper booklet filed by Operational Creditor. The demand notice was issued to the Corporate Debtor who gave replay belatedly on 02.05.2019. The Operational Creditor raised invoices from 02.04.2018 to

01.10.2018. They are shown as Exhibit 'E' (Colly.) at pg. No.32 to 38 of the paper booklet. The Demand Notice dated 05.03.2019 is shown as Exhibit 'F' at pg. Nos.39 to 64. The response / reply given by Corporate Debtor is shown as Exhibit 'H' at Pg.No.68 to 70 of the paper booklet.

7. The Learned Counsel for Operational Creditor would contend that at no point of time prior to Demand Notice, the Corporate Debtor raised any dispute. The Corporate Debtor for the first time raised dispute by way of reply / response to the demand notice which is slightly intended to avoid liability and allegations in the reply are not shown correct. The learned Counsel for Operational Creditor contended that Corporate Debtor has mainly relied on an undersigned letter / contract dated 12.07.2017. The terms of the said letter were never accepted. It is only a proposal and after deliberations and negotiations, the Contract Agreement was executed on 01.08.2017. This contract was signed by Corporate Debtor. The alleged deliberations of 38 activities are never part of the Contract dated 01.08.2017. The Corporate Debtor never raised the alleged dispute at any time when contract was alive. This is raised for the first time after demand notice is issued. Such a dispute cannot be relied. The Hon'ble NCLAT also held the same view in the matter of ***Ahluwalia Contracts (India) Limited vs. Raheja Developers Limited*** and Learned Counsel for Operational Creditor also relied on the decision of the Apex Court in the matter of ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited (2017) 1 SCC Online SC 353.***The alleged dispute is frivolous and is devoid of merits.

8. The Learned Counsel further contended Annexure-I to the Contract mentions that deliberations will be "press coverage to the value of retainer ship" which the Operational Creditor has provided. The Learned Counsel has contended the contract is that of retainer i.e., appointment of a Professional Consultant on a monthly retention cost. It is not a deliverable based document wherein the agency would be paid on performance parameters /

matrix or as per a menu card tariff. The retainer fee between the parties is fixed whether deliverables is one or seven or zero. Thus, retainer fee of Rs.85,000/- is fixed and is not based on deliverables achieved in any particular month. Thus, Learned Counsel contended the contention of Corporate Debtor that payment of retainer fee was based on the deliverables is totally devoid of what was actually agreed between the parties in the contract. Counsel contended the Operational Creditor has arrived at the total outstanding of Rs.7,02,400/- which is clear from the ledger shown as Exhibit 'C' and the invoices are provided in Exhibit 'E' (Colly.). Learned Counsel for Corporate Debtor contended in fact today retainer fee at Rs.85,000/- + GST for initial months which is evident from the ledger account filed by the Corporate Debtor. Therefore, it cannot be said there is any pre-existing dispute. Thus, Learned Counsel for Operational Creditor would contend that Operational Creditor proved existence of Operational Debt by filing the Invoices and that there is no pre-existing dispute and as such petition is liable to be admitted.

9. On the other hand, Learned Counsel for Corporate Debtor would contend that petition cannot be admitted against Corporate Debtor on the ground that there was a pre-existing dispute. Learned Counsel for Corporate Debtor also filed written submissions. Counsel contended, Operational Creditor failed to render services to the Corporate Debtor in terms of understanding dated 12.07.2017. Therefore, there is a pre-existing dispute and petition cannot be admitted.

10. Points raised in the written submissions filed on behalf of Corporate Debtor will be dealt in the course of the Order.

11. We have seen the Contract dated 01.08.2017. The Terms of Contract go to show that Petitioner / Operational Creditor will be paid monthly Retainer fee of Rs.85,000/- + GST as applicable. The fees will be payable monthly in advance. The services to be

rendered by the Operational Creditor to the Corporate Debtor would cover public relations activities of Corporate Debtor including managing media relations. A fixed monthly retainer fee is the remuneration for the services rendered by the Operational Creditor to the Corporate Debtor as per contract, which is at Rs.85,000/- per month + GST. The Operational Creditor further relied on the copy of the ledger statement which is maintained in the regular course of business shown as **Exhibit-'C'** at Page No.26-27 of the paper booklet. The ledger copy filed by the Operational Creditor goes to show that a fixed amount of Rs.1,00,300/- is being claimed for the public relations services. It goes without saying that the amount payable for the services rendered by Operational Creditor to the Corporate Debtor is at Rs.85,000/- + GST per month.

12. The Operational Creditor further filed the copy of Invoices for the defaulting months, which is from April, 2018 to 1st October, 2018. They are shown as **Exhibit – 'E'** (Colly.) at page Nos.32-38. The invoices go to show that public relations fee for every month is Rs.85,000/- + GST @ 18% which is at Rs.15,300/- which comes together at Rs.1,00,300/-. The Operational Creditor raised invoices from April, 2018 to October, 2018. It is not the case of the Corporate Debtor that it has paid the amount covered by the invoices.

13. The Petitioner / Operational Creditor further filed **Exhibit – 'F'** which is copy of Demand Notice dated 05.03.2019 issued to the Corporate Debtor. It is shown at page nos. 39-45 of paper booklet.

14. The Corporate Debtor gave reply shown as **Exhibit-'H'**, which is at page no.68-70 of the paper booklet. For the first time, Corporate Debtor raised dispute through this reply which is beyond 10 days from the date of service of Demand Notice. The Corporate Debtor raised dispute for the first time that there was deficiency of servicesby not complying with the agreed terms of

deliverables. The Corporate Debtor is contending in the reply that there was deficiency of services from the side of Operational Creditor.

15. The Operational Creditor mainly relied on the contract and the invoices raised. As per the contract, Operational Creditor is entitled for retainer fee of Rs.85,000/- + GST. Infact, Corporate Debtor paid certain invoices, which is evident from the ledger account of the Corporate Debtor maintained by Operational Creditor. The monthly fee along with GST comes to Rs.1,00,300/- which is a fixed fee. The same was paid by Corporate Debtor to the Operational Creditor for certain months. The default is from April, 2018 to October, 2018 and there was demand notice issued to the Corporate Debtor.

16. The contention of Corporate Debtor that Operational Creditor is to render certain services which are shown in the letter dated 12.07.2017. This was a proposal which is subject matter of further discussions. It is not as if an agreed contract. It was a mere proposal. It is even not signed by the Operational Creditor. Therefore, it cannot be held as a concluded contract. There is absolutely no dispute with regard to the concluded contract entered into between the parties on 01.08.2017. Parties are bound by this contract. The Operational Creditor is entitled for monthly retainer fee at Rs.85,000/- per month + GST. The question whether there was any pre-existing dispute. The contention of Learned Counsel, the contract is for a period of one year starting from August, 2017 and ending by July, 2018. Counsel contended the basis for entering into the contract on 01.08.2017 is the proposal dated 12.07.2017. Counsel contended that Operational Creditor did not render services as enumerated in the proposal dated 12.07.2017. There was deficiency of service. Counsel contended there was an e-mail communication through which the Corporate Debtor is continuously demanding the Operational Creditor to deliver the activities shown in the proposal dated 12.07.2017 and there was

short of services. It is not in dispute that monthly retainer fee alongwith GST is Rs.1,00,300/-. The Corporate Debtor also filed its ledger copy shown at page No.8 of the counter. The Corporate Debtorhas shown in the ledger against payment of Rs.1,00,300/- as marketing expenses. So, the ledger account of the Corporate Debtor also shows that amount payable to the Operational Creditor is on monthly basis at Rs.1,00,300/-. The e-mails relied by the Corporate Debtor do not show that there was any pre-existing dispute. In fact, Corporate Debtor made payments to the Operational Creditor in respect of certain invoices and if there is really deficiencies of services then how Corporate Debtor honoured some of the invoices. In other words, Corporate Debtor made payment to the Operational Creditor in respect of certain invoices. In fact, there was no letter to the Operational Creditor raising a dispute of deficiency of services. Even reply is given by the Corporate Debtor to the Demand Notice belatedly after expiry of 10 days. The Corporate Debtor raised dispute for the first time in reply notice as if there was deficiency of services in the reply. It cannot be held that there was a pre-existing dispute. In this connection, Counsel for Operational Creditor relied on the decision of Hon'ble NCLAT in the matter ***Ahluwalia Contracts (India) Limited vs. Raheja Developers Limited.*** The prior dispute must be pre-existing i.e. it must exist before receipt of demand notice or tax invoice. There is nothing on record to show that any dispute was raised before raising tax invoice.

17. The Counsel for Operational Creditor further relied on the decision of the Apex Court in the matter of ***Mobilox Innovations Pvt. Ltd. vs. Kirusa Software (P) Limited (2017) 1 SCC Online SC 353*** and contended the existence of the dispute and /or the suit or arbitration proceedings must be pre-existing i.e. it must exist before the receipt of demand notice or invoice as the case may be.

18. The other contention raised is that there is no provision for the interest. Even the amount covered by interest is excluded, the

claim is more than Rs.1,00,000/- and therefore petition can be admitted.

19. The Operational Creditor has established that Corporate Debtor committed default of Operational Debt and as such application is liable to be admitted.

20. The Operational Creditor failed to name anyone as Interim Resolution Professional and has requested the Tribunal to appoint one for the Corporate Insolvency Resolution Process. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period 1st July 2019 to 31st December, 2019 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr. Nukala Sreedhar having Registration No.IBBI/ IPA-001/ IP-P00432/2017-2018/10755, Mobile No. 9848146369 e-mail id: Sreenuka_1@yahoo.com as Interim Resolution Professional. The aforesaid interim resolution professional has no disciplinary proceedings pending against him. He shall file his written communication and all relevant paper immediately before Registrar of this Tribunal but not later than two days.

21. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions:-

i. The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

ii. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

iii. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

iv. That the order of moratorium shall have effect from 20.11.2019 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

v. The Petitioner is directed to pay a sum of Rupees 1,00,000/- (One Lakh Only) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

vi. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

Accordingly, this Petition is admitted.

20.11.19 20.11.19

NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

RATAKONDA MURALI
MEMBER (JUDICIAL)

Syamala