NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

06.02.2026

Present: JUSTICE N. SESHASAYEE, MEMBER (JUDICIAL)

MR. INDEVAR PANDEY, MEMBER (TECHNICAL)

Company Appeal (AT) (Ins) No.454 of 2025

Mr. Akshay Kumar Bhatia ...Appellant

Vs

M/s. Cue Learn Private Limited ...Respondent

(Arising out of Order dated 07.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court IV) in C.P. (IB) No. 572 of 2022)

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Anish Agarwal, Mr. Pratik Chakma, Ms. Natasha Bagga, Mr. Abinav Maurya, Ms. Alina Merin Mathew, Ms. Tanisha Chaudhary, Advocates

For Respondent: Mr. Prithu Garg, Mr. Shivam Singh, Mr. Ashutosh Arvind Kumar, Advocates

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

1. This appeal is preferred challenging the Order of the Adjudicating Authority in C.P.(IB) 572 of 2022, dated 07.01.2025, dismissing a

petition filed by the appellant to initiate a CIRP against the respondent under Sec.9 IBC.

Facts:

2. The broad facts that lead up to this appeal are required to be outlined. The appellant herein is an actor and is a popular film star. On 08.03.2021, a tripartite agreement, styled as 'Endorsement Agreement' came to be executed as between the Respondent as the First party, the Appellant as the Second party and one Culture Company (P) Ltd., as the Third party. (The role of the third party to the contract is largely passive vis-à-vis the purpose of the working agreement, and except in reply to the demand notice under Sec.8 IBC, it does not find any reference anywhere in the facts constituting the present dispute). In other words, the contractual obligations required to be performed are essentially between the appellant and the respondent herein. The salient features of the contract which are contextually relevant are:

    a) Clause 2 of the said Agreement declares that the term of the agreement is for two years (from 08.03.2021 and 07.03.2023). Clause 3.2 of the agreement stipulates that during this period the appellant has to make himself available for *not more than two days* and render his services to the respondent for which appellant was to be paid Rs.8.10 crores in terms of Clause 5 of the Agreement. The mode of payment was detailed in Clause 5.1.1 and 5.1.2.

b) In terms of Clause 5.1.1, the respondent is required to pay Rs.4.05 crores (50% of the consideration stipulated in Clause 5) on or before 08.03.2021. Clause 5.1.2 provides that Rs.4.05 crores is required to be paid on or before 15.04.2022 or seven days prior to the utilisation of the second of the two days period, whichever is earlier.

c) The payment in terms of Clause 5.1.1. was paid, and the appellant's services were utilised for one day (even though, as would be seen shortly, the reply to the Sec.8 demand notice seems to allege that the appellant was yet to notify the two days of his convenience, implying thereby that the appellant has not rendered any service under the contract). The appellant however, was not paid the balance 50% in terms of Clause 5.1.2 of the agreement. In this backdrop, the appellant raised an invoice dated 15.04.2022 on the respondent for, what the appellant considered as the balance 50% payable in terms of Clause 5.1.2 of the contract. There was no response to this invoice.

d) Therefore, on 20.05.2022, the appellant issued a statutory demand notice under Sec.8 IBC, and this was responded to by the respondent with its reply dated 25.05.2022. To this, on 22.06.2022, the appellant sent its rejoinder.

e) The Respondent's line of defence as could be gathered both from its reply to Sec.8 notice that no invoice dated 15.04.2022 as alleged to have been issued was not received, that as per clauses 5.1.1 and 5.2.1 of the contract, without a valid invoice, no liability

arises, that discussions were held with Culture Company (the third party to the contract)'s representative , that in terms of clauses 5.1 read with Clause 5.2.1, artist must confirm the availability for two days before payment obligation arises, and that no mutually agreed dates were ever confirmed, and that the respondent was awaiting the appellant's confirmation of two days availability. In its rejoinder to this reply, the appellant would *inter alia* contend that the contract does not envisage raising of invoice for making payment, and at any rate separate invoices were raised for payment due both under Clauses 5.1.1. and 5.1.2, and the second invoice was served in the same manner as was the first invoice.

3. Without any loss of time, the appellant had laid his petition under Sec.9 IBC. The respondent's principal plank of defence was that the operational debt claimed by the appellant is embroiled in the construction of the terms of the contract as to whether appellant is entitled to claim remuneration for the service not rendered on the second of the two days dedicated period, and that if at all any, the appellant can only claim damages for breach of contract, but it will not constitute operational debt under Sec.5(21) of the IBC.
4. Holding that there exists a pre-existing dispute vis-à-vis the construction of the contract (the Endorsement Agreement), and that at the best the appellant might be entitled to damages for breach of contract which falls outside the definition of operational debt, the

Adjudicating Authority chose to dismiss the appellant's petition under Sec.9 IBC. Hence the present appeal.

Appellant's Arguments:

5. The learned counsel for the Appellant argued:

   a) that the cause of action for the appellant to seek initiation of a CIRP involves an understanding of the contract between the parties. A plain reading of the contract and ascertaining the intent of the parties is not the same as construction of an ambiguous document. Sec.94 and Sec.95 of the BSA (previously Sec.91 and 92 of the Evidence Act) forbids the admissibility of any parole evidence to vary the terms of a contract. On a plain reading of the Endorsement Agreement dated 08.03.2021, its quintessential feature is that the appellant, an artist, shall render services to the respondent for which the appellant shall set aside two days to be fixed based on mutual convenience during the contractual term of two years (which was to end on 07.03.2023) for a consideration to be paid. And the dispute is over payment of consideration.

   b) Payment for the services to be rendered is stipulated in clause 5 of the contract. Clause 5 says that the appellant shall be paid Rs.8.10 crores plus GST *for making himself available to render services*, and it further stipulates the manner of payment in clauses 5.1 and 5.2. Under Clause 5.1, the appellant was to be paid Rs.4.05 crores plus taxes and GST on or before 08.03.2021 (the day on which the agreement was entered into by the parties) or 7 days prior to the

utilization of the first day of the two days on which the appellant was to render his services. This amount was paid, and the appellant had also rendered his services for one day, even though the respondent appears to deny that the appellant had ever rendered any services.

c) So far as the payment of the balance amount goes, Clause 5.2 of the contract stipulates that Rs.4.05 crores plus taxes should be paid on or before 15.04.2022 or seven days prior to the utilisation of the second day, *whichever is earlier*. The phrase "whichever earlier" makes evident that the Clause 5.2 has created an independent obligation to make unconditional payment and it is not made related to the services to be performed. Once the payment for the two dedicated days is made, it is for the respondent to utilise the services of the appellant. The respondent however, intends to efface the phrase '*whichever is earlier*' and tries to bring in an interpretation that payment must be made for actual services, which the plain reading of clause 5.2 read with clause 5 does not accommodate. The contention of the appellant stands fortified by a combined reading of Clause 5, 5.2, 7.2(c) and (d), and clause 3.6(b). In terms of clause 7.2(c), when the respondent defaults, all amounts including the entire consideration become immediately due and payable while both clause 7.2(d) and 3.6(b) provides that on respondent's default, the appellant would not be liable to refund that the payment he had received. The respondent has used the services of the appellant for one day, and if it does not use the second day, then it is the choice

it has made, and it cannot be made to relate itself to the unconditional obligation to make the payment in terms of clause 5.2.

d) Any unconditional obligation to make payment constitutes a debt, and when there is a default in paying it, it gives rise to a cause of action for seeking the initiation of CIRP against the corporate debtor under Sec.9 IBC. Any right to payment including that which arises out of a breach of contract would amount to claim and as held in ***Pioneer Urban Land Vs Union of India*** [(2019) 8 SCC 416], it need not even be adjudicated by a civil court and replaces the earlier understanding that breach of contract give rise only to a claim of damages as held in ***UOI Vs Raman Iron Foundary*** [(1974) 2 SCC 231]. It would therefore constitute a debt and any default in paying the same enables the invocation of Sec.9 IBC.

e) To outmanoeuvre the logical consequence which flow from a plain reading of Clause 5.2 read with 5 and 3.6(b) of the contract, the respondent attempts to develop an argument that obligation to comply with Clause 5.2 is directly associated with actual rendering of services. Even by the ratio in ***Mobilox Innovations case*** [(2018) 1 SCC 353] it is a sham defence.

Reliance was placed on the ratio in ***Somesh Choudhary v. Knight Riders Sports P. Ltd.*** [2022 SCC OnLine NCLAT 3505], ***Union of India v. Raman Iron Foundry*** [(1974) 2 SCC 231], ***H.P. Housing & Urban Development Authority v. Ranjit Singh Rana*** [(2012)4

SCC505:(2012) 2SCC(Civ)639], ***New Okhla Industrial Development Authority v. Anand Sonbhadra*** [(2023) 1 SCC 724],

Respondent's Arguments

6. Per contra, the learned counsel for the respondent submitted:

   a) The respondent's counsel maintained that the appellant's claim for the second instalment of ₹4.05 crores does not qualify as an operational debt under Section 9 of the IBC.

   b) The payment was contingent upon performance of the second day of endorsement services. Since the artist (appellant) neither has offered nor rendered the services for the second day, the contractual condition precedent for paying the second instalment has not arisen. In other words, prior to 15th April, neither the respondent required the appellant to provide his services for the second day, nor the appellant had an occasion to offer any contracted service. To state it differently, when the respondent has not availed the second day and it is not under any obligation to make any payments. The contract has created reciprocal obligations and mutual performance was essential before payment liability could arise. Neither clauses 7.2(c) or (d) nor Clause 3.6(b) provide for payment without services.

   c) When no services were provided, there is no need for making any payment, and hence there is no issue of any operational debt arising out of this circumstance. Necessarily there does not arise any default

in paying a debt either. The respondent has highlighted the ambiguity in understanding the terms of the contract, which is evident from the correspondence before issuance of the demand notice made this clear. Since the point, whether the obligation to pay the second instalment was automatic or is contingent, has been disputed even prior to the demand notice, it satisfies the ***Mobilox*** test of *'genuine pre-existing dispute'*. Hence invoking Sec.9 IBC is barred under the scheme of IBC. After all IBC is not a recovery mechanism.

Reliance was placed on the ratio in ***Union of India v. Ram Iron Foundry*** [AIR 1974 SC 1265], ***Tower Vision India Pvt. Ltd. v. Procall Private Limited*** [2012 SCC Online Del 4396], ***Chandrashekhar Exports Pvt. Ltd. v. Babanraoji Shinde Sugar & Allied Industries Ltd.*** [C.P. No. 3667/IBC/MB/2019], ***Chandrashekhar Exports Pvt. Ltd. v. Babanraoji Shinde Sugar & Allied Industries Ltd.*** [C.A. (AT)(INS) No. 1032 of 2023], ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*** [(2018) 1 SCC 353], ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India*** [(2019) 8 SCC 416], ***Swiss Ribbons (P) Ltd. v. Union of India*** [(2019) 4 SCC 17].

Discussion & Decision

7. Both sides punctuated their arguments with authorities carrying precedential value. The principles however, are settled, and they are

merely required to be reiterated to provide a basis for our approach to this case:

a) That the existence of a debt and default, the two fundamental factors which provide a cause for initiating a CIRP, should be beyond doubt or debate. To state it differently, the debt and default should not have been embroiled in a dispute between the parties at any time prior to the initiation of CIRP under Sec.9 IBC, indeed even prior to the demand notice required to be issued under Sec.8 IBC. Where any of these factors is under a shadow of a genuine dispute, then CD will be in safe zone as CIRP cannot be commenced.

b) Where the CD pivots its defence in a pre-existing dispute over debt or default, the defence so raised shall have to undergo a forensic scrutiny by the Adjudicating Authority for ascertaining the prospects of it being at least plausible. The Adjudicating Authority may therefore, have to scan and probe every relevant material made available before it which includes a plain understanding of any written contract between the parties. In this pursuit even as the Adjudicating Authority examines any written contract, it is still beyond its jurisdiction to construct a contract the way a civil court would do. To expatiate it, if there are any ambiguities in the material terms of the contract which affect the endeavour of the Adjudicating Authority to gather the real intent of the contracting parties, then the Adjudicating Authority is merely required to identify it but not to iron out the creases for discovering the real intent purported to be conveyed by the terms of the contract. After all the endeavour of the

Adjudicating Authority is limited to ascertaining the existence of the facts which may enable the commencement of a CIRP, and not to adjudicate on any disputed fact, based on preponderance of probabilities as in a recovery proceeding.

The contentions of the rival parties in this case will now be tested on the plane of these principles.

8. There is no dispute that the contract required the appellant to set aside 2 days within two years ending 07.03.2023 for rendering services, which in terms of Clause 3.2 of the contract, must be at the date, time and place and schedules to be mutually agreed to by the parties in writing. The appellant was paid 50% of the sum agreed to be paid as consideration for two days as signing amount as provided in Clause 5.1.1, and his services too have been procured for a day. Admittedly, the second day services were not procured, but the appellant has made his claim for the second instalment in terms of Clause 5.2. The point is whether non-payment of the amount stipulated to be paid under clause 5.1.2 gives rise to an operational debt, or does it merely give rise to a cause of action for claiming damages for breach of contract.

9. The quintessence of the controversy therefore, is what exactly is the intent of the parties when they entered into a contract vis-à-vis the payment of total consideration of Rs.8.10 crores in terms of Clauses 5, 5.1.1, and 5.1.2: whether the total consideration is required to be made for the services to be rendered irrespective of the number of days over

which such service is promised to be rendered, or is it merely payment for the day on which service is rendered. To be more specific, is the payment of consideration of Rs.8.10 crores plus taxes is work specific - for one work to be rendered over a period not exceeding two days, or is it time specific, which is to mean, consideration of Rs.4.05 crores payable for every day when the services are rendered by the appellant?

10. Since the parties are at variance on this issue, and inasmuch as the respondent has raised a dispute over it, it now becomes imperative to ascertain what the plain reading of the contract supports. It is underscored that our effort is to identify if a plausible dispute exists in understanding the terms of the contract and not how we harmonise internal inconsistences, if any.

11. It made clear that that if the issue eventually boils down to one involving breach of contract on the part of the respondent entitling the appellant to a claim for damages, then in terms of Sec.3(6) of the Code, the appellant would be entitled to make a claim, but a mere right to claim damages will not still constitute any debt within the meaning of an operational debt as defined under Sec.5(21). While a claim may include a debt, not every claim will constitute a debt for commencing a CIRP. As outlined earlier, there will be a need to travel thus far to enter a finding on it only if we find that the plain reading of the contract leads to a conclusion that the defence resting on a pre-existing dispute is fanciful and sham.

12. To commence, whether a plain reading of the contract indicates that the choice of the expression which the contracting parties have used for conveying their intent leaves an element of ambiguity in understanding that intent. Here, the learned counsel for the appellant contended that Sec.94 & 95 of the BSA (corresponding to Secs. 91 and 92 of the Evidence Act) prohibited the admissibility of parole evidence to vary the term of the contract. We cannot but admit this statutory position. That however, may be relevant in a situation where a judicial fora is invited to construct a contract on the basis of any facts which are extraneous to the express terms of the contract. We have already indicated that we are only required to identify if the pre-existing dispute which the CD puts forth on the basis of its understanding of the contractual terms is plausible or fanciful, and no more.

13. The object for the formation of the contract could be gathered from Recital D and Clause 3.2. Recital D reads: "*The Company* (the respondent) *being desirous of, approached the Artist* (read it as the appellant) *to avail the Services (hereinafter defined) of the Artist, for the endorsement of the Website (hereinafter defined), at the Company's own cost and risk*'. This is required to be read alongside Clause 3.2, and it is as below:

> "*Subject to the terms thereof, and subject to the payment of all the amounts including the Consideration amount by the Company to the Artist and performance of all other obligations by the Company, and provided there is no default on the part of the Company, the*

Artist hereby agrees to make himself available for not more than two (2) days, being the Dedicated Period, to render the Services, at the date, time, places and schedules mutually agreed by and between the Parties hereto in writing. ....."

This recital does not require any decoding since its plain reading informs that the appellant is required to provide his services as an artist for the endorsement of the Website of the respondent at a time, place, and schedules to be mutually agreed to between the parties for not more than two days during the two years term of the contract (between 08.03.2021 and 07.03.2023), for a consideration. The consideration is payable only for the services to be rendered.

14. The term regarding payment of consideration is dealt with in clauses 5, 5.1.1. and 5.1.2. They are as below:

"5. Consideration

5.1 In consideration of the Artist having agreed to make himself available to render the Services. the Company shall pay to the Artist, a sum of Rs.8,10,00,000/ (Rupees Eight Crore Ten Lakhs Only) plus all taxes including, GST, etc. ("Consideration"). in the following manner:

5.1.l Rs.4,05,00,000/- (Rupees Four Crores and Five Lakhs only) plus all taxes including GST, etc., on or before 8th March, 2021 or seven (7) days prior to utilization of one (1) Day, whichever is earlier ("Signing Amount"); and

5.1.2 Rs.4,05,00,000/- (Rupees Four Crores and Five Lakhs only) plus all taxes including GST, etc., on

> *or before 15th April, 2022 or seven (7) days prior to utilization of two (2) Days, whichever is earlier."*

A plain reading of the above terms of the contract indicate that total consideration of Rs.8.10 corers plus taxes is required to be paid to the appellant for *making himself available to render Services*, which in terms of Clause 3.2 is for no more than two mutually agreed days. The contract is an executory contract and the appellant was required to be paid for the services to be rendered. Here following aspects which flow directly on a plain reading of the contract are relevant:

a) The appellant has not, under the contract, blocked any two specific days for rendering services, and hence the appellant is least likely to have lost what his talent could have earned him anytime during the term of the contract even if the respondent has defaulted in procuring the services of the appellant.

b) While clause 5 stipulates the total consideration required to be paid, clauses 5.1.1. and 5.1.2 merely provides the time for payment merely. Here, the parties to the contract agree that it shall be paid in two instalments: the parties were ad idem that 50% of the consideration shall be paid '*on 08.03.2021 (the date on which the contract was executed) or 7 days before utilisation of the one (1) day, whichever is earlier'* . Clause 5.1.2 is similar to clause 5.1.1 except that it stipulates the balance Rs.4.05 crores is required to be paid '*on 5.04.2021 of 7 days prior to the utilisation of two (2) Days, whichever is earlier*.' If the choice of

the words the parties have chosen to employ (even though the respondent has taken up a plea that the contract was drafted by the appellant, the fact remains the respondent has executed the contract with open eyes) is carefully scanned, what it reveals on a plain reading is that the consideration has to be paid only for utilisation of the appellant's services for two days, or not exceeding two days.

c) Does the phrase, '*whichever is earlier*' provide any clue to hold that the second instalment of the consideration has to be paid no matter that the appellant's services are not required or rendered for the second day? According to the appellant, the phrase '*whichever is earlier*' under clause 5.1.2 makes evident that the respondent has undertaken to pay latest by 15.04.2021 irrespective of whether the appellant is called upon to render his contracted services for Day 2 or not. This understanding appears bit farfetched, but at any rate does not conclusively decide the issue. Even clause 5.1.1 has the same phrase, but then services were rendered for Day 1. Here, there is no stipulation in the contract that the appellant will schedule his two days for rendering his services only after the entire consideration as stipulated in clause 5 is paid.

d) The respondent's contention is that the consideration has to be paid at the rate of Rs.4.05 crores only for the day for which the appellant has performed his part of the contract, and relies on clause 5.2. This clause stipulates that if the appellant is required

to render his services for any day in excess of the two days to be reserved by the appellant under the contract then the respondent is required to pay Rs.4.05 crores plus tax for such additional day. Does not Clause 5.2 read with clauses 5.1.1 and 5.1.2 indicate a plausible understanding that the consideration is required to be made at Rs.4.05 crores for every day on which the appellant has to perform?

Since we are not constructing the contract, but merely are in the process of identifying any plausible pre-existing dispute in understanding the contract, even if a prima facie view could be made on a plain reading of the contract in support of a pre-existing dispute, then the finding has to be entered in favour of the corporate debtor. The result: advantage respondent.

15. The appellant laid considerable emphasis on clauses 3.6(b) and 7.2(c) and 7.2(d) of the contract to fortify his contention. If these provisions are closely read, they spell out the consequences awaiting the respondent if it does not perform its part of the contract. Clauses 7.2(c) and (d) reads:

> *"(c) all amounts including the entire Consideration amount of Rs.8,10,00,000/- (Rupees Eight Crore Ten Lakhs Only) plus all taxes including GST, etc. payable by the Company to the Artist, shall forthwith become due and payable and the Company shall forthwith pay the same to the Artist alongwith interest thereon at the rate of 12% per annum from the date of the Company's Default till the actual payment thereof;*

(d) the Artist shall not be liable, required, obligated to refund, return any money including the Signing Amount of Rs.4,05,00,000/- (Rupees Four Crores and Five Lakhs only) plus all taxes including GST, etc. or any part thereof to the Company and neither the Company nor shall any person be entitled to receive, recover any money from the Artist"

While Clause 7.2(c) provides that the appellant has a right to make a claim for the entire consideration where the respondent wholly defaults in performing its part of the contract, clause 7.2(d) provides for forfeiture of the signing amount which is the first instalment of the consideration paid under Clause 5.1.1 in the eventuality of the respondent defaults in fulfilling its contractual obligations. Cautioning ourselves not to embark on an enquiry on the effect of these contractual terms in terms of the principles of Contract Act, we still believe that consideration payable cannot be separated from the purpose for which it was agreed to be paid.

16. To sum up while the appellant's understanding of the contract seems to suggest that he has to provide one service – of endorsing the respondent's Website. The consideration payable is one consolidated sum receiving which the appellant has undertaken to perform one service, which in terms of the contract is required to be made for not more than two days. The second day in that sense, may have to be understood as a cushion to meet the contingency when the contracted services could not be fully performed on the first day. However, nowhere

in the contract we find any indication that the consideration as agreed upon represents a consolidated sum for one service to be rendered for not more than two days. On the other hand, the terms of the contract make the understanding of the contract as projected by the respondent a possibility. This would mean that the pre-existing dispute which the respondent has raised appears reasonably plausible. Eventually this has to be sorted out by a civil court and not by us.

Conclusion:

To conclude, we affirm the judgement of the Adjudicating Authority in C.P. (IB) No. 572 of 2022 dated 07.01.2025 and consequently dismiss the present appeal. No costs.

[Justice N. Seshasayee]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

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