

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-400(ND)2022

IN THE MATTER OF:

M/s JHS Svendgaard Limited

Registered office at:
Trilokpur Road,
Kheri (Kala Amb), Sirmour
Himachal Pradesh-173030

...Applicant/Operational Creditor

VERSUS

M/s. HT Media Limited

Registered office at:
18-20, Kasturba Gandhi Marg,
New Delhi-110001

...Respondent

Section: 9 of the IBC, 2016

Order Delivered on : 03.01.2023

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. P. Nagesh, Sr. Adv., Adv. Anushree Malavivya,
Adv. Akshay Sharma

For the Respondent : Mr. Abhinav Vasisht, Sr. Adv, Ms. Vanita
Bhargava, Ms. Wamika Trehan,
Mr. Siddhant Kumar, Adv.

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

M/s. JHS Svendgaard Laboratories Limited (for brevity, the **'Applicant/Operational Creditor'**) has filed the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. HT Media Limited (for brevity, the **'Respondent'**).

2. The Respondent namely, M/s. HT Media Limited is a Company incorporated on 03.12.2002 with CIN L22121DL2002PLC117874 under the provisions of the erstwhile Companies Act, 1956, having its registered office situated at 18-20, Kasturba Gandhi Marg, New Delhi-110001, which is within the territorial jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs.72,50,00,000/- and Paid-up Share Capital is Rs.46,54,96,628/- as per its Master Data.

3. It is stated that the Applicant and the Respondent entered into an Advertising Agreement dated 25.01.2017 (the **"Agreement"**), as per which the Applicant made a security deposit/advance payment of Rs. 8,00,00,000/- (Rupees Eight Crores Only) vide NEFT bank transfer to the Corporate Debtor, which was to be utilized towards the supply of advertisement services from the Respondent. The Agreement was originally valid for a term of 5 years, which was to lapse on 25.01.2022.

4. It is further stated that vide written communications dated 21.11.2017, 21.06.2018 and 03.07.2018, the Applicant and the Respondent agreed to extend the term of the Agreement by a period of 6 months + 6 months i.e., by a total period of 1 year. Consequently, the term of the Agreement was to lapse on 25.01.2023.

5. It is submitted that the Applicant utilized the advertisement services of the Respondent from January 2017 to January 2019, for which an amount of Rs.2,61,11,134/- was adjusted from the aforesaid Security Deposit by the Respondent. However, due to various reasons, including but not limited to commercial concerns arising out of the Covid-19 pandemic, the Applicant did not opt to utilize the advertisement services of the Respondent from January 2019 to January 2022. Sometime around May/ June 2021, the Applicant made a request to the Respondent to further extend the term of the Agreement by an additional period of one year i.e., in total extending the term period by two years, up to 25.01.2024. It is further submitted that vide email dated 15.01.2022, the Respondent shared a detailed Statement of Account between the parties as of December 2021, whereby the Respondent categorically admitted that a balance amount of Rs.5,38,88,866/- from the Security Deposit was lying with the Respondent.

6. It is further submitted that the Respondent and Applicant held a meeting on 17.01.2022 to discuss the further extension of the Agreement, wherein the Respondent not only refused to extend the term period of the Agreement, but also stated that the Agreement would stand

terminated with effect from 25.01.2022, i.e., prior to the agreed date of termination. Consequently, the Applicant opposed such arbitrary purported termination of the Agreement and informed the Respondent that if the Respondent were to terminate the Agreement on 25.01.2022, it would become liable to immediately return the Balance Security Deposit to the Applicant.

7. The particulars of the Debt claimed including the total amount of default and the date of default are mentioned in Part IV of the application, which is reproduced below, for the sake of convenience:

Part IV

PARTICULARS OF OPERATIONAL DEBT		
1.	Total Amount of Debt, Details of Transactions on account on which Debt fell due, and the Date from which such Debt fell due	Total amount receivable / total amount of debt is Rs. 5,38,88,866/- along with interest. The principal amount is payable under applicable law and as per the Agreement,
2.	Amount claimed to be in Default and the Date on which the Default occurred (Attach the workings for computation of amount and dates of default in Tabular Form)	Principal amount receivable/ total debt due is Rs. 5,39,39,475/-. The default in payment under each instalment occurred on the date on which the Corporate Debtor terminated the Agreement i.e. 25.01.2022.

8. Thus, as per Part IV of the Application, the Applicant has claimed the total outstanding debt of Rs. 5,39,39,475/-.

9. It is stated by the Applicant that it had issued a Demand Notice dated 21.02.2022 under Section 8 of IBC 2016 at the registered office of

the Respondent, which was delivered to the Respondent on 23.02.2022. However, the Respondent did not reply to bring any notice of dispute between the parties nor paid the outstanding Balance Security Deposit. The Applicant has filed the Affidavit under Section 9(3)(b) of 2016.

10. The Applicant has also filed its Written Submissions and submitted the following list of important dates and events:

A. BREIF LIST OF DATES

Date	Particulars
25.01.2017	<p data-bbox="483 790 1005 824"><u>Advertisement Agreement dated 25.01.2017</u></p> <p data-bbox="483 842 1284 1189">The Operational Creditor ("OC") and Corporate Debtor ("CD") entered into an Advertising Agreement dated 25.01.2017 ("the Agreement") by which <i>inter alia</i> the OC agreed to place advertisements of the value of Rs. 10,00,00,000/- (Rupees Ten Crores Only) with the CD [@Annexure A-1, Pg. 19]. The OC deposited Rs. 8,00,00,000/- (Rupees Eight Crores Only) as Security Deposit as per Article 2.3 of the Agreement [@Annexure A-1, Pg. 24].</p> <p data-bbox="483 1256 1284 1865">It may be noted that <u>as per Article 3, the original "Term" of the Agreement was for a period of five years [@Annexure A-1, Pg. 26] i.e. from 25.01.2017 till 25.01.2022</u>. The Agreement was accordingly divided into five "Sub-Terms", each for a period of one year. The "First Sub-Term" (defined in Article 1.1(h) of the Agreement [@Annexure A-1, Pg. 22]) was the period from the "Commencement Date" viz. 25.01.2017 till the First Anniversary of the Commencement Date i.e. between 25.01.2017 till 25.01.2018. It may be noted that the "Second Sub-Term" (Article 1.1(i)) was defined as the period beginning from the "First Anniversary of the Commencement Date and ending on the Second Anniversary of the Commencement Date" i.e. 25.01.2018 till 25.01.2019. Thus, the Second Sub-Term (and all subsequent Sub-</p>

	Terms) would commence only on the Anniversary of the preceding Sub-Term.
15.11.2017	<u>First Request for Extension of Term</u> <i>Vide</i> email dated 15.11.2017 [@Annexure A-3, Pg. 41], the OC sought an extension of the period for the “ <i>first year spend</i> ” i.e. “First Sub-Term” which was originally for the period between January 2017 till January 2018 by a period of “ <u>6 months from January 31, 2018 to July 31, 2018</u> ”.
21.11.2017	<u>First Extension of the Agreement</u> The CD agreed to the extension request <i>vide</i> email dated 21.11.2017 [@Annexure A-3, Pg. 41]. Thus, the First Sub-Term was extended by a period of 6 months i.e. for the period July 2017 till July 2018. Resultantly, the Term of the Agreement got extended by a period of 6 months and was only to lapse in July 2022.
21.06.2018	<u>Second Request for Extension of Term</u> <i>Vide</i> email dated 21.06.2018, the OC again requested a further extension for the for “ <i>the committed spend of the first year</i> ” by an additional 6 months i.e. from “ <u>31st July’2018 to 31st January’2019</u> ” [@Annexure A-3, Pg. 39].
03.07.2018	<u>Second Extension of the Agreement</u> The CD agreed to the second extension <i>vide</i> email dated 03.07.2018 [@Annexure A-3, Pg. 39]. Thus, the First Sub-Term was extended by a further period of 6 months and the First Sub-Term was revised to the period starting only from January 2018 and ending on January 2019. Thus, the “Second Sub-Term” would only commence on the First Anniversary of the Commencement Date [i.e. 25.01.2019] and end on the Second Anniversary of the Commencement Date [i.e. 25.01.2020]. In this manner, the “Term” of the Agreement was extended by a further period of 6 months, and in total by a period of 1 year, and would therefore lapse only in January 2023.
07.05.2021	<u>Third Request for Extension of Term</u> In view of Covid-19 and other factors, the OC sought a total extension of the Agreement by a period of 2 years (including the extension of 1 year already granted) i.e. till 25.01.2024 [Application Seeking to place on record Additional Documents dated 02.06.2022 @Pg. 19].
17.05.2021	<u>Response to Request for Third Extension</u> The CD replied to the requesting stating that it does “not believe that the management will be inclined to extend the terms of the advertising contract” [Application Seeking to place on record Additional Documents dated 02.06.2022 @Pg. 18].
02.06.2021	<u>Email from OC to CD</u>

	<p>The OC immediately sent an reply to the CD <i>inter alia</i> stating as follows:</p> <p>"You are further aware that the reason for the previous extension of term in 2018 was in the interest of commercial prudence and the extension was taken with your consent... <u>For the sake of clarity, I would like to mention that the current request for extension is only for an additional period of one year. As you recall, the extension taken in 2018 had already increased the term by 6 + 6 months, thereby extending the total term period to 2022-2023. The present request is to only further extend the total term period by a year, i.e. to 2023-2024,</u>in light of the financial and operational setbacks that have affected the performance of this agreement" [Application Seeking to place on record Additional Documents dated 02.06.2022 @Pg. 16-17]</p>
02.07.2021	<p>Email from CD to OC</p> <p>The CD responded to the email dated 02.06.2021, <i>inter alia</i> denying any extension to the Term of the present Agreement and stated as follows:</p> <p>"I checked with my Controllers team on past extensions on advertising commitments. <u>Please note that we are not aware of any extensions on the terms and as per our understanding the contract is ending by January 2022.</u> If you have any specific intimation from us for the same, then you are requested to share that so that I can cross reference with our Controllers team."</p> <p>[Application Seeking to place on record Additional Documents dated 02.06.2022 @Pg. 13-14]</p>
12.07.2021	<p>Email from OC to CD</p> <p>The OC replied to the email dated 02.07.2021 <i>inter alia</i> stating:</p> <p>I will remind you our communication in July 2018 with your management, including Mr. Piyush Gupta, Mr. Ateev Chaddha, and Mr. Sanjeev Bahl, as per which <u>HT had agreed to extend the first of five terms from January 2018 to January 2019, and therefore as per our common understanding, the contract is due to expire only in January 2023 in any case.</u>"</p> <p>[Application Seeking to place on record Additional Documents dated 02.06.2022 @Pg. 12-13]</p>
11.08.2021	<p>Email from CD to OC</p> <p>The CD replied to the email dated 12.07.2021, where it categorically admitted to the first extension of the first sub-term till July 2018 and stated as follows:</p> <p><u>"We reiterate on the mutual agreement to extend the first sub-term...to July 2018.</u> However, we do not have any communication wherein the parties mutually agreed to extend the overall deal tenure to FY23..."</p>

	<p>[Application Seeking to place on record Additional Documents dated 02.06.2022 @Pg. 10-11]</p>
14.09.2021	<p><u>Email from OC to CD</u> The OC <i>inter alia</i> shared the details and proof of both the extensions (dated 21.11.2017 and 03.07.2018) with the CD. [Application Seeking to place on record Additional Documents dated 02.06.2022 @Pg. 9-10]</p>
06.10.2021	<p><u>Premature Termination of Agreement</u> The CD refused to grant any further extensions, and in material breach of its obligations, purported to illegally and prematurely terminate the Agreement on 25.01.2022 being "5 years from the date of commencement i.e. 25.01.2017", in complete disregard of the extensions already granted in writing. [Application Seeking to place on record Additional Documents dated 02.06.2022 @Pg. 8-9]</p>
17.01.2022	<p>The OC and CD had a video-conference over "Zoom", where the CD reiterated that the CD shall prematurely terminate the Agreement on 25.01.2022 and shall forfeit the Balance Security Deposit of Rs. 5,38,888,866/-. [Application Seeking to place on record Additional Documents dated 02.06.2022 @Pg. 6-7]</p>
21.02.2022	<p><u>Demand Notice</u> The OC sends a Demand Notice dated 21.02.2022 under the Insolvency and Bankruptcy Code, 2016 ("IBC") to the CD for the unpaid operational debt i.e. the Balance Security Deposit of Rs. 5,38,888,866/-. [Petition u/s 9, IBC, Annexure A/6, @Pg. 62]</p>
23.02.2022	<p><u>Delivery of Demand Notice</u> The Demand Notice dated 21.02.2022 was delivered at the registered address of the CD. [Application Seeking to place on record Additional Documents dated 27.05.2022 @Pg. 6-7] It may be noted that the CD failed to provide any reply to the Demand Notice.</p>
25.03.2022	<p><u>Email from CD to OC</u> The CD wrote an email to the OC <i>inter alia</i> stating that "...unconsumed amounts (If any) ["Balance Security Deposit"] is lapsed accordingly". [Application Seeking to place on record Additional Documents dated 02.06.2022 @Pg. 6]</p>
May 2022	<p>The OC filed the present Application under Section 9 IBC against the CD.</p>

11. On issuance of the notice, the Respondent has filed its reply dated 21.07.2022 and raised the following objections –

11.1. As per the clause 2.6 and 2.7 of the “Agreement”, the security deposit was to be refunded in the event of breach on part of the respondent or its obligations and bare perusal of the petition would indicate that it has never been contended by the Applicant that the Respondent has acted in material breach of any of the terms under the Agreement. Furthermore, it is the Applicant, who has breached its obligations under the Agreement by not placing the advertisements as per the commitments prescribed under the various sub-terms thereby causing financial loss to the Respondent.

11.2. It is the sole contention of the Applicant that the Agreement stood terminated and therefore, the balance Security Deposit shall be repayable to it. However, the article 2.9 of the Agreement clearly provides that on termination of the agreement on account of any reason, other than material breach on part of the Respondent under Article 5, the Security Deposit stood forfeited. The Agreement did not envisage that the balance Security Deposit will be refunded to the petitioner in case it fails to utilize the Security Deposit by refraining from placing advertisements on the Respondent's platforms and not complying with its commitment under the Agreement.

11.3. There were various pre-existing disputes/differences between the parties in relation to the Agreement. A perusal of the additional

documents filed by the Applicant dated 02 June 2022, clearly indicates that disputes and differences had arisen between the parties in relation to termination/term/expiry of the Agreement much prior to filing of the present petition. Further, the Agreement contains a Dispute Resolution Clause, which provides for negotiation and Arbitration, for adjudication of any disputes/differences arising under the said Agreement, which the Applicant has deliberately failed to invoke.

11.4. Through its email dated 15 November 2017, the Applicant sought an extension of 6 months from the Respondent for complying with the minimum commitment of Rs.2,00,00,000/- for the first sub-term, that is from January 2018 to July 2018. In good faith, the Respondent granted the said extension of 6 months vide its email dated 21st November 2017. On 21st June 2018, the Applicant again wrote an email to the Respondent requesting for a further extension of 6 months of the first sub-term, which the Respondent allowed vide its email dated 3rd July 2018 and therefore, only the utilization of commitment of the first sub-term was extended for a total period of one year.

11.5. The above extension was sought by the Applicant in view of the fact that while the unused sub-term credit for the 2nd, 3rd and 4th sub-terms could have been carried forward to the next year, no carry forward provision was envisaged for the remaining years, i.e., the 1st sub-term and the 5th sub-term as per Article 2.2 of the Agreement. Hence, the Applicant sought an extension of one year from the Respondent only for the first sub-term so that the unused credit from the first sub-term won't

get forfeited. Given this background, the Applicant was also aware that unused credit from the fifth sub-term was also not to be carried forward and stood forfeited upon conclusion of the Agreement, therefore, it again sought an extension from the Respondent for extending the 5th sub-term of the Advertisement by one year. As such an extension was neither permitted under the Agreement, nor was commercially viable, the Respondent denied the request of the Petitioner *inter-alia* vide emails dated 17.05.2021, 02.07.2021, 11.08.2021, 06.10.2021 and finally, vide email dated 25.03.2022, whereby the Respondent categorically stated that as per the terms of the contract, “*unconsumed amounts (if any) is (are) lapsed accordingly.*”, thus making its stand amply clear that as per the terms of the Agreement, the Security Deposit stood forfeited with the expiry of the term of the Agreement on 24.01.2022 and 25.01.2022. The emails exchanged between the parties clearly indicate that there were serious disputes.

11.6. The Applicant on the one hand has contended that the Agreement stood extended till 2023, on the other hand, it has filed the present Application upon the disputed premise that the Agreement is terminated in January 2022. The Respondent has relied on the judgment in ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (2018) 1 SCC 353***, wherein the Hon'ble Supreme Court held that disputes may exist, without necessarily being escalated to the court/arbitration, so long as a dispute exists in fact and is not spurious, hypothetical or illusory, insolvency Petition is liable to be rejected. The

Adjudicating Authority has only to see whether there is a plausible contention which requires further investigation, without going into the merits of the dispute.

11.7. Service of demand notice was defective as it was not addressed to the respondent but to an individual working for gain with Respondent. It is further averred that the proceeding under IBC, 2016 are not designed as a tool for recovery of money but to bring out of insolvency and maximization of value of assets of the Respondent. Hence, the present Application is liable to be dismissed.

12. The Applicant has filed certain additional documents vide IA 5446/2022 & IA 5441/2022, which were taken on record vide order dated 22.12.2022.

13. We have heard the submissions made by the Ld. Counsels appearing on behalf of the parties and perused the documents and Written Submissions placed by them on record. It is observed that the Respondent has opposed the admission of the Application mainly on the ground that there is no operational debt due and payable to the Respondent and there is a pre-existing dispute between the parties. In support of its contentions, the Respondent has relied upon the clauses of the Agreement and e-mail communication between the parties. We would, therefore, like to examine the contentions raised by the Respondent.

14. It is argued by the Respondent that the amount advanced by the Respondent as security deposit stood forfeited and it is not refundable in terms of clauses 2.6 to 2.9 of the Agreement, which are reproduced below, for the sake of convenience:

2.6 The Company acknowledges and recognizes that based on the Total Commitment undertaken by it under Article 2.2 of this Agreement, HT has made necessary arrangements to ensure that the advertising space is available to the Company for the advertisement of its products and for all other purposes as mentioned in clause 2.1, during the Term of this Agreement. In view of the said arrangement made by HT, the Parties hereby agree that any failure by the Company to meet its Total Commitment, will cause considerable loss to HT and to mitigate such loss, the Company has agreed that save and except as provided in Article 2.8 and 2.9 below, it shall not be entitled to refund of any part of the amount paid under this Agreement under any circumstances and such amount shall only be set off against the advertisements to be placed in HT Media in the manner provided herein and HT shall not be entitled to recover and / or claim any other losses of whatsoever nature from the Company.

2.7 Accordingly, any part of the Annual Commitment unutilised in terms of Article 2.2 above, at the end of Fifth Sub-term only, shall stand forfeited.

2.8 Security Deposit

The Parties hereby agree that the Security Deposit shall be refunded to the Company at the end of the Term of this Agreement after making appropriate deductions, if there is a material breach by HT of its obligations under this Agreement.

2.9 It is specifically agreed that, any termination of the Agreement for any reason, other than a material breach by HT of its obligations under this Agreement, in terms of Article 5 shall result in the forfeiture of the outstanding Security Deposit at the time of such termination.

In view of the above, it is contended by the Respondent that the term of the Agreement had expired on 25.01.2022 and clause 2.9 of the Agreement is squarely applicable in the circumstances and therefore, the amount stands forfeited in the aforesaid terms.

15. Per contra, it is contended by the Applicant that the Agreement dated 25.01.2017 was for a period of five years from 25.01.2017 to 25.01.2022 and was divided into five sub-terms, each for a period of one year. It has added that the Respondent had agreed to revise and extend the period of the first sub-term from January, 2017 to January, 2018 and further, from January 2018 to January 2019. The relevant emails, relied by the Applicant, in this regard are reproduced below:

"Sanjeev.Bahl@hindustantimes.com" <Sanjeev.Bahl@hindustantimes.com>
Subject: Re: Extension of 6 months for first year ad spend

Sure Piyush.

Nikhil - we will get this done not an issue.

Best

On 03-Jul-2018, at 4:48 PM, Piyush Gupta (Finance, New Delhi) <piyush.gupta@hindustantimes.com> wrote:

Hi Nikhil. Sorry for the late response, we are working in the internal approvals for your request which we had a bit of to and fro on.

Finally we have managed the extension, however it will be the last time as we are under tremendous pressure, not to violate the contractual commitment.

My colleague, Ateev (copied) will formalise this.

Look forward

Many Thanks

Piyush

On 21-Jun-2018, at 19:43, NIKHIL NANDA <nikhil@svendgaard.com> wrote:

Dear Piyush,

This email is in line with our discussions with regard to the underlying advertising agreement between HT Media and JHS Svendgaard Laboratories Ltd and request for a FINAL 6 months extension due to following reasons:

1. Our licences for various characters took longer than expected leading to delay in product development, however now we have on board almost 9 license characters and are launching the products thereof, few of which have already been rolled out as well.
2. We have also taken Tiger Shroff as celebrity on board for the brand promotion and should be signing him finally by 30 June as all terms are closed.
3. Our process of setting up the retail distribution channel covering all General Trade, Modern Trade, E-commerce channels got delayed due to the products delay but with all products and celebrity in place we are confident of having the same also in place latest by September'18.

In this reference we would request you for one last time additional extension of another six months (31st July 2018 to 31st January 2019) for the committed spend of the first year.

We look forward for your cooperation and support as always.

Regards,
Nikhil Nanda | MD
nikhil@svendgaard.com
Website: www.svendgaard.com
<image001.jpg>

We Make the World Smile!

JHS Svendgaard Laboratories Limited

CIN: L24230HP2004PLC027558

Corporate Office: B-1/E-23 MCIE, Mathura Road, New Delhi – 110044

Tel: +91-11-29949675 | Fax: +91-11-26900434

Registered Office: Trilokpur Road, Kheri (Kala-Amb), Tehsil - Nahan, Distt. Sirmour, Himachal Pradesh - 173030, INDIA

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From: piyush.gupta@hindustantimes.com
[mailto:piyush.gupta@hindustantimes.com]
Sent: 21 November 2017 14:35
To: NIKHIL NANDA
Cc: Ashish Goel; Deepshikha Tomer; ateev.chadda@hindustantimes.com
Subject: Re: Extension of 6 months for first year ad spend

You're welcome Nikhil.

Many Thanks

Piyush

On 21-Nov-2017, at 14:26, NIKHIL NANDA <nikhil@svendgaard.com> wrote:

Dear Piyush

Thanks a ton, really appreciate it.

Regards

Nikhil Nanda
We Make the World Smile!
JHS SVENDGAARD LAB.LTD. Trilokpur Road, Kheri
(Kala-Amb), Tehsil - Nahan, Distt. Sirmour, Himachal Pradesh
- 173030, INDIA.

Website: www.svendgaard.com
JHS svendgaard Laboratories Limited
Corporate Office: B1/E23 MCIE mathura road
New Delhi 110024
Tel: +91 11 29949675

From: "piyush.gupta@hindustantimes.com"
<piyush.gupta@hindustantimes.com>
Date: Tuesday, November 21, 2017 at 11:49 AM
To: Nikhil Nanda <nikhil@svendgaard.com>
Cc: Ashish Goel <ashish@svendgaard.com>, 'Deepshikha Tomer' <cs@svendgaard.com>
Subject: Re: Extension of 6 months for first year ad spend

Dear Nikhil,

Sorry for the late response. I was tying up the internal processes. The extension of 6 months is approved. I am copying my colleague, Ateev to operationalise the same.

Ateev, As discussed.

Thanks

From: nikhil nanda <nikhil@svendgaard.com>
Date: Wednesday, 15 November 2017 at 10:30 AM
To: Piyush Gupta <piyush.gupta@hindustantimes.com>
Cc: Ashish Goel <ashish@svendgaard.com>, 'Deepshikha Tomer' <cs@svendgaard.com>
Subject: Extension of 6 months for first year ad spend

Dear piyush

As discussed yesterday, due to licencing process takings time of various characters we have now with us for oral care.

We are delayed in launching our new range by about 6 months and would be launching April 2018 instead of January 2018.

Kindly allow us extension in our first year spend by 6 months from January 31,2018 to July 31, 2018.

Appreciate the relationship and look forward to a positive response.

Warm Regards

Nikhil Nanda
JHS Svendgaard Laboratories Limited

16. On perusal of the above, it is observed that the Applicant's request for extension of the "first-year ad spend" was allowed vide email of the Respondent dated 21.11.2017. Further, the Applicant vide its email dated 21.06.2018 sought another extension of six months for utilizing the unutilized Annual Commitments for the first sub-term year, which was also allowed by the Respondent vide its email dated 03.07.2018 as a last chance.

17. It is further contended by the Applicant that vide email dated 07.05.2021, it had sought extension of the entire agreement by a period of two years i.e., 25.01.2024. The said email is reproduced below, for the sake of convenience:

From: ASHISH GOEL <ashish@svendgaard.com>
Sent: Friday, May 7, 2021 1:52 PM
To: Sandipta Mandal (Ad For Equity- Mumbai) <sandipta.mandal@hindustantimes.com>
Cc: CS <cs@svendgaard.com>; NEERAJ KUMAR <neeraj@svendgaard.com>; KIRTI MAHESHWARI <kirti.maheshwari@svendgaard.com>
Subject: Term Extension | Advertising Agreement | JHS and HT Media

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Sandipta,

Greetings for the Day !!

Hope you and everybody in your and HT family are doing safe and fine in these difficult times of pandemic.

As you are aware that it's been almost over an year now that the world is grappling with COVID-19. People have been constrained to remain at homes with restricted travel while trying to safeguard themselves and their loved ones. The behavior, working pattern and preferences of the end consumer have seen a radical change including a shift towards Social media & -commerce platforms as a

preferred mode of business as well as advertisement. I believe that yourself being from the core industry would have much deeper insights into the facts and recognition of this change.

In similar ways, our businesses have also been impacted due to the pandemic and accordingly the utilization of the media credit available with your organization has been much slower than as anticipated during the pre Covid period. Also the pandemic has yet not ended and experts have been projecting about multiple more waves of this deadly virus to come and accordingly have been advising people to remain indoors and avoid social contacts, so we really don't see the behavioral change of the consumers coming back to normal for a very long period.

However, in order to rationalize and balance out this change, we would request for an extension of the term by atleast another two (2) years, i.e. till 25.01.2024, considering the COVID-19 scenario, in order to utilize the remaining credit lying unutilized to the tune of Rs.5.61 Cr.

Looking forward for your understanding and cooperation in this regard. Should there be any clarifications and/or formalities required for extension, please let me know.

Thanks & Regards,

Ashish Goel | CFO
ashish@svendgaard.com
Website: www.svendgaard.com



We Make the World Smile!

JHS Svendgaard Laboratories Limited
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18. Per contra, it has been stated by the Respondent that vide its email dated 17.05.2021, it had declined the request of the Applicant for extending the term of advertising agreement stating that it does not believe that the management will be inclined to extend the term of the advertising contract, the copy of the same is reproduced below:

From: sandipta.mandal@hindustantimes.com (<mailto:sandipta.mandal@hindustantimes.com>)
Sent: 17 May 2021 14:41
To: ASHISH GOEL
Cc: CS; NEERAJ KUMAR; KIRTI MAHESHWARI; anirudh.singhal@lvehindustan.com; rajnish.lauhari@hindustantimes.com
Subject: Re: Term Extension | Advertising Agreement | JHS and HT Media

Dear Ashish

Thank you for checking with us. I am doing fine and hope the same for you.

I agree with you that Covid – 19 pandemic has changed the business models for every company. Today none of us know whether this change is permanent or temporary. I guess the verdict will be out sometime in future depending upon the severity of the subsequent waves. , I am quite optimistic that as the vaccination drive picks up over the next few months – this too shall pass – and slowly the growth momentum will be back in India's favour.

Just like any other business, we have been also impacted negatively by the pandemic. Despite the challenges, we ensured to reach our customer base, uninterrupted, throughout this period to deliver credible news in these tough times. This has come at a cost as our advertising revenue declined given the challenges our clients were facing but cost remaining intact.

We have been discussing at regular intervals both pre and post Covid on your advertising commitments. Prior to the pandemic, there was a shortfall of approx. Rs 3.30 Crs. In all our discussions, you had stated that the JHS team is not immediately looking to further burn on HT platforms and hence this request for an extension comes as a surprise to me. Also, you are aware that HT has incurred a massive loss of Rs 5.3 crores on its equity investment in this partnership due to changes in your business model over the years. We had discussed possibilities for you to facilitate the exit for HT but again no tangible proposal was presented to us in our discussions.

In light of this, I do not believe that the management will be inclined to extend the terms of the advertising contract on same terms. I would request you to work with your team and come back to me with a credible marketing plan that you are wanting to do, and I can check internally on what best is possible.

Regards

Sandipta

+91-8692085219

HT Strategic Investments

19. The Applicant has further stated that vide its email dated 02.06.2021, the request for extension was only for an additional period of one year since the extension taken in 2018, had already increased the term of the Agreement by 6 + 6 months, thereby extending the total term period to 2022-23. The subsequent request was to only further extend the total term period by another year i.e., 2023-24. The copy of the said email is reproduced below:

From: ASHISH GOEL
Sent: 02 June 2021 16:36
To: sandipta.mandal@hindustantimes.com
Cc: CS; NEERAJ KUMAR; KIRTI MAHESHWARI; anirudh.singhal@livehindustan.com; rajnish.jauhari@hindustantimes.com
Subject: RE: Term Extension | Advertising Agreement | JHS and HT Media
Importance: High

Dear Sandipta,

Thank you for your email and for sharing your concerns regarding the proposed extension. At the outset, I would like to mention that all of us at JHS value the business partnership with HT Media and we hope to arrive at a solution that best serves both the parties' needs and priorities. In this spirit, allow me to clarify certain points that you have raised in your previous email dated 17.05.2021.

To begin with, we completely empathise with your position: our company has also had to battle through a tight revenue and cash crunch induced by the Covid-19 pandemic. We have been constrained to ration our resources so as to maximise their utility. With this in mind, we also note that HT Media's circulation revenue has unfortunately dipped by nearly 85% in Q1 of '21 compared to Q1 of '20 qua your English print vertical. This leads to the inevitable conclusion that JHS would not be able to realise the value of its advertisement costs which were contemplated at the time of signing the agreement.

These unprecedented conditions resulting from the Covid-19 pandemic could not have been reasonably expected or even contemplated. This decline in circulation is not marginal, but exponential, and it strikes at the very core and goal of the contract - to advertise JHS's products. However, as you rightly pointed out, with vaccinations increasing, the climate is hopefully set to improve for our businesses in time to come.

You are further aware that the reason for the previous extension of term in 2018 was in the interest of commercial prudence and the extension was taken with your consent. JHS met its subsequent commitments for utilisation and has acted in a bona fide and transparent manner in carrying out its obligations under the agreement and disclosing relevant information. The present request for extension is triggered solely by the unforeseeable

impact the pandemic has had on our respective businesses, and therefore stands on a separate footing from the previous requests for extension.

While it is regretful that HT Media has suffered losses on account of its equity investment in JHS, that being an independent transaction does not bear relevance to the instant contract. In fact, JHS had previously even offered HT Media an exit which would have considerably reduced the losses borne by HT Media; however, HT Media was not inclined to take the offer at the time. JHS has consistently carried out its obligations in good faith and has taken fair account of the position of both parties involved.

For the sake of clarity, I would like to mention that the current request for extension is only for an additional period of one year. As you recall, the extension taken in 2018 had already increased the term by 6 + 6 months, thereby extending the total term period to 2022-2023. The present request is to only further extend the total term period by a year, i.e. to 2023-2024, in light of the financial and operational setbacks that have affected the performance of this agreement. JHS has faith that HT Media will regain its position in the market, and its business operations and circulation levels are likely to return to normal by such time.

Please let me know if I can clear any doubts you have regarding our request. I look forward to collaborating further with you and finding the best solution.

Thanks & Regards,
Ashish Goel

20. On the other hand, the Respondent vide its email dated 02.07.2021 has denied such an extension and stated that as per them, the Agreement expired in January 2022. The copy of the said email is reproduced below, for the sake of convenience:

From: sandipta.mandal@hindustantimes.com <sandipta.mandal@hindustantimes.com>
Sent: 02 July 2021 11:34
To: ASHISH GOEL <ashish@svendgaard.com>
Cc: CS <cs@svendgaard.com>; NEERAJ KUMAR <neeraj@svendgaard.com>; KIRTI MAHESHWARI <kirti.maheshwari@svendgaard.com>; anirudh.singhal@livehindustan.com; rainish.jauhari@hindustantimes.com
Subject: Re: Term Extension | Advertising Agreement | JHS and HT Media

Dear Ashish

We had a detailed discussion with our management on your request and I am summarizing their view below.

As I articulated in the email before, the pandemic had a negative impact on every business including yours and ours. While our circulation did go down initially, the team worked tirelessly to make sure that it recovered as quickly as possible. For our advertisers including AFE clients, we brought out various schemes such as 1+1 during this period. Also during this time, we have significantly strengthened our digital platforms and I am happy to inform you that our clients have greatly appreciated our initiatives and have used our platforms throughout this period to reach out to their customers.

In our discussions, the management took an adverse view on the shortfall in your commitments even prior to the national lockdown in Mar'20. I am summarizing the utilization prior to Mar'20 for your reference :

Terms	Ad Value (in INR)	Utilization (in INR)	Cash %
1st Sub-Term(upto first Rs 2	2,00,00,000	2,00,00,000	0%

Cr) - HT extended it on request			
2nd Yearly Sub -Term due Jan 2019	2,00,00,000	86,55,937	25%
3rd Yearly Sub -Term due Jan 2020	2,00,00,000		25%

I would like to draw your attention to the conversations between us in pre and post pandemic era where in I had requested you to reinstate the campaign with HT. However, we have not seen any tangible usage unfortunately from your end. In light of this the management feels that it was a mistake to consider a 0% cash component in this deal even in the first term basis request from you as it has caused significant loss to HT in the absence of follow-on advertising.

I checked with my Controllers team on past extensions on advertising commitments. Please note that we are not aware of any extensions on the terms and as per our understanding the contract is ending by January 2022. If you have any specific intimation from us for the same, then you are requested to share that so that I can cross reference with our Controllers team.

Finally, it is regretful that you are saying that you have made offers to us for facilitating exit from JHS Svendgaard that would have reduced HT's losses considerably. I would like to remind you that all those exit options were offered at prices prevailing prices in the stock market at that time and hence held no merit. The management no doubt is disappointed by lack of adequate efforts from your end to facilitate a reasonable exit for a long-term partner.

In light of this, the management has declined the request for an extension of the advertising agreement. Basis the advertising experience with you in FY'22 we shall present an update to the management prior to the end of the advertising term for their final view. However, please note that the management is not inclined to extend the time period for the shortfall of advertising commitments in the pre-pandemic era.

Hoping for a better co-ordination in future.

Thank you.

Best regards,

21. In addition to the above, there were further email communications between the parties on 12.07.2021, 11.08.2021, 14.09.2021, 6.10.2021, 14.01.2022 and 17.01.2022.

22. Thus, it is evident that there has been difference of interpretation between the parties in regard to the overall tenure of the Agreement under reference. Whereas, the Applicant vide its email dated 02.06.2021 has

contended that the extension of the term of the Agreement by 6 + 6 months given by the Respondent in 2018 has already increased the total term period of the Agreement to 2022-23, the Respondent has denied such an extension and stated that the Agreement was valid only till January, 2022 only. We are unable to see any unambiguous email or document on record, by the Respondent to the Applicant, which could demonstrate beyond doubt that the Respondent had either extended the overall term of the Agreement or admitted that the Agreement was in existence after January 2022. Furthermore, there is no addendum to the original Agreement between the parties, which could establish that the tenure of the entire agreement was extended. Hence, in our considered view, the Application has been pursued for a disputed debt. Needless to say, that this Adjudicating Authority is not a dispute *redressal* forum.


23. Further, this Bench observes that the Demand Notice in the instant case was issued by the Applicant on 21.02.2022, whereas all the above referred e-mail communications are of the dates prior to the issuance of the demand notice, which makes us to conclude that there is a pre-existing dispute between the parties in relation to the tenure and extension of the Agreement.


24. At this stage, we consider it worthwhile to refer to the Judgement of the Hon'ble Supreme Court passed in the matter of **Mobilox Innovations Private Limited Vs Kirusa Software Private Limited in the CIVIL APPEAL NO. 9405 OF 2017:**

“40. ...Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

25. **The Application is accordingly Dismissed.**

26. However, nothing expressed herein shall be construed as an opinion before any other forum to affect the rights of both the parties to agitate the matter further.


(S/d A)
MEMBER (T)


(BACHU S/d AM DAS)