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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 17.05.2019

PRESENT: 1. Hon'ble Member (J) Shri Rajeswara Rao Vittanala

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 73/BB/2018	For pronouncement of orders	Sec 9 of I&B Code 2016	M/s Lidan Marine AB	ATV Legal	M/s Transvahan Technologies India Private Limited	Thomas V Peter Advocates

ADVOCATE FOR PETITIONER/s: _____

ADVOCATE FOR RESPONDENT/s: _____

ORDER

CP (IB) No. 73/2018 is dismissed by separate order.


MEMBER(J)

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Verified

Court Officer

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.(IB)No.73/BB/2018
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s. Lidan Marine AB
Regd. Off: Fiskaregatan 3,
53130 Lidkoping,
Sweden.

- Petitioner/Operational Creditor

*(Rep. by its Authorised Signatory
Mrs. Liselotte Ljungdahl)*

Versus

M/s.Transvahan Technologies India Pvt. Ltd.
Regd. Off: No.202, KT-35,
89/1, 6th Main, 16th Cross,
Malleshwaram,
Bengaluru – 560 055.

- Respondent/Corporate Debtor

Date of Order : 17thMay,2019

Coram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties/Counsels Present:

For the Petitioner : Shri John Paul. A

For the Respondent : Shri Thomas V. Peter

ORDER

Per:Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.73/BB/2018 is filed by M/s. Lidan Marine AB('Petitioner/Operational Creditor') under Section 9 of the IBC, 2016 R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by interalia seeking to initiate




Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Transvahan Technologies India Private Limited ('Respondent/Corporate Debtor') on the ground that it has committed a default for Principal amount of SEK 2,48,594 (Swedish Kronor Two Lakh Forty Eight Thousand Five Hundred and Ninety Four only) equivalent to INR20,01,181.70/- (Indian Rupees Twenty Lakh One Thousand One Hundred and Eighty One and Seventy Paise Only) as on 16th January, 2018 and INR19,64,327.60/- (Indian Rupees Nineteen Lakh Sixty Four Thousand Three Hundred and Twenty Seven and Sixty Paise only) as on 7th March, 2018 together with interest @10% p.a. being the total invoice amount with delayed amounts and interests from the date of invoice till realization.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s.Lidan Marine AB ('Petitioner/Operational Creditor') having Identification No.556015-2612 was incorporated in 1909 as per the laws of Sweden. It is engaged into the business of inter alia manufacturing winches/ropes. It is the leading supplier of complete, customized winch and handling systems within its principal segments and is well-known in the global market. It is the affiliate of Sepson India Private Limited ('Sepson India').

(2) M/s.Transvahan Technologies India Private Limited ('Respondent/Corporate Debtor') with CIN: U74140KA2007PTC04183 was incorporated on 22.02.2007 under the provisions of Companies Act, 1956. The Nominal/Authorized Share Capital of the Company as per MCA website as on February, 2018 is Rs.10,00,000/- (Rupees Ten Lakhs Only) divided into 10,000 Shares of Rs.100/- each. The Paid-up Share Capital of the Company is Rs.10,00,000/- (Rupees Ten Lakhs Only) divided into



10,000 Shares of Rs.100/- each. It is involved in business of manufacturing battery operated vehicles, automotive component, vehicle body building, recovery winch system, sales and marketing, business support, training, etc.

- (3) The names of Directors of the Corporate Debtor as per MCA website and as available on the last filed Financial Returns are Shri Venkatesan Salem Ramakrishnan (DIN No.0001285492), Saraswathi Ramakrishnan (DIN No.0001290235) and SaraswathyVenkatesan (DINNo.0001429190).
- (4) Sepson India had received a large order from M/s. TATA Motors Limited for the supply of winches ("Tata Order"). For the compliance of the Tata Order, Sepson India has entered into a Sub-contracting & Manufacturing Agreement dated 07.09.2015 with the Corporate Debtor and Shri S.R. Venkatesan. The said Agreement inter alia was also applicable to the affiliates of the respective Parties. The Operational Creditor is the affiliate of Sepson India Private Limited and hence was bound by the said Agreement to the extent of supply of goods are concerned.
- (5) The Corporate Debtor approached the Operational Creditor for supply of parts of winches i.e.wire rope-description of the part/good supplied is provided in the Invoice No.15001. As per the terms of the Agreement, the ropes were supplied by the Operational Creditor to the Corporate Debtor. The Corporate Debtor upon satisfaction, received the parts of the winches and duly acknowledged the receipt. The Ropes were supplied through the air and said fact is evident from an Air Waybill bearing No.157/ARN/98838460.



- (6) Accordingly, the Operational Creditor raised an invoice for the winches parts supplied to the Corporate Debtor. The details of the pending invoice in brief are as follows:

Sl. No.	Invoice Number	Invoice Date	Amount (In SEK)	Amount (In INR)
1	15001	31.08.2016	248594.00	20,01,181.70
TOTAL			248594.00	20,01,181.70

- (7) The Corporate Debtor had collected the ropes after the payment of required customs duty. The said fact is evident from an email dated 16.08.2016 sent by the Corporate Debtor to the Operational Creditor confirming that they have received the Lidan Marine AB invoices and also paid the customs duty and cleared 60 nos. of Ropes.
- (8) The total principal amount due and payable by the Corporate Debtor to the Operational Creditor is SEK 2,48,594 (Swedish Kronor Two Lakh Forty Eight Thousand Five Hundred and Ninety Four Only) equivalent to INR 20,01,181.70/- as on 16th January, 2018 and INR 19,64,327.60/- as on 07th March 2018, in respect of the winches supplied by the Operational Creditor to Corporate Debtor as on 31st August, 2016. The Operational Creditor is also entitled to interest @ 10% p.a. on the said amount from the date of invoice raised by it upon the Corporate Debtor till payment and/or realization by the Operational Creditor.
- (9) As the Corporate Debtor failed to make the payment even after various reminders, the Operational Creditor issued a demand notice along with Invoice dated 16th January 2018 as per the provisions of the Code calling upon the Corporate Debtor to remit the Amount due within a period of 10 (Ten) days, failing which the Operational Creditor has warned the Corporate Debtor that it would be constrained to initiate appropriate legal proceedings for



recovery of the said amount at the Corporate Debtor's sole and entire risks as to costs and consequences. The Corporate Debtor acknowledged the receipt of the legal notice issued by the Operational Creditor. The Corporate Debtor had replied to the said notice via email on 23.01.2018.

- (10) Despite the receipt of the demand notice from the Operational Creditor, the Corporate Debtor has failed to pay to the Operational Creditor the outstanding amount and deferred the payment thereof on one pretext or the other.
 - (11) Ms. Liselotte Ljungdahl is authorised on behalf of the Operational Creditor to sign and execute this insolvency petition under a Board Resolution dated 28th February, 2018.
 - (12) The Corporate Debtor is unable to pay its creditors and its liability far exceeds its present and probable assets and is commercially insolvent. Therefore, it is just fit and equitable that the Corporate Debtor be wound up under the provisions of the Section 9 of the IBC, 2016.
 - (13) It is further stated that as the Corporate Debtor did not raise any dispute and refused to make the payment to the Operational Creditor, the Operational Creditor has filed this Application.
3. The Respondent has opposed the application by filing Statement of Objections dated 17.07.2018, by inter alia contending as follows:
- (1) It is contended that the Petition contains several blank spaces in List of Dates and Events columns with Form 5 more so over regarding the dates and events which become very crucial to any transaction. It appears to be a deliberate act on behalf of the Operational Creditor to do so for the reason that there was no business relationship/commercial transaction/contractual obligations at all much less any agreement between the Operational Creditor and the



Corporate Debtor. The Operational Creditor has not provided any dates in the table of events/particulars to support his contention of the existence of any contract/purchase order. This is mandatory regarding any commercial/business transaction. Out of eight Date boxes, only 3 boxes with dates have been filled-in that too these dates which pertain to letter/invoice from Operational Creditor and date of postal delivery to Corporate Debtor. This clearly establish that none of the events in terms of request for quotation, scope of supplies, purchase order, order acknowledgement/confirmation, invoice plans, delivery schedule, inspection and acceptance, payments/other terms took place. It is contended that any commercial transaction between two parties need to have seamless communication, which is totally missing herein.

- (2) It is further stated that it is highly false and misleading on the part of the Operational Creditor to mention in the tables of events that the Corporate Debtor had approached the Operational Creditor for the supply of part of winches and it is vehemently denied. Further, that no orders were placed by the Corporate Debtors with the Operational Creditor at any point of time and hence the question of providing any specifications/requirements by the Corporate Debtor does not arise. Hence, the contention in the table of events is denied as false. It is pointed out that Invoice No.15001 dated 31.08.2016 referred to by Operational Creditor in table of events was sent by the Operational Creditor to Corporate Debtor is a fictitious and malicious invoice and it is false, misleading and fabricated document generated with fraudulent intent. It is further stated that subsequent to sending the fake Invoice No.15001 dated 31.08.2016, the Corporate Debtor received several mails from Operational Creditor and every email was responded to the Corporate Debtor.



The Operational Creditor has suppressed this material information in table of events. The payment against Invoice No.15001 is neither due nor is payable by Corporate Debtor.

- (3) In the table of events, the Demand Notice sent by Operational Creditor is as per Form-4 of IBC, 2016 and Not Form-3 as claimed wrongly by the Operational Creditor. This demand notice is denied as false. Further, in the table of events, the contents of the Demand Notice dated 16.01.2018 sent by Operational Creditor is as per Form-4 of IBC, 2016 and Not Form-3 as claimed wrongly by Operational Creditor. Corporate Debtor has sent an email reply dated 25.01.2018 along with letter dated 23.01.2018.
- (4) It is further stated that the Operational Creditor has restrained itself from mentioning the dates in the column pertaining to the same but however in the events column claims that the Corporate Debtor approached the Operational Creditor for supply of parts of winches (wire rope). There is absolutely no proof regarding the same and it is quite obvious that no proof can be forth coming due to the fact that there was no purchase order at all placed by the Corporate Debtor. There was no contractual understanding, agreement or obligations whatsoever between the Operational Creditor and Corporate Debtor. The Operational Creditor has deliberately avoided mentioning the dates at several places in the table of events in order to mislead the Tribunal. Dates wherever mentioned by the Operational Creditor are irrelevant and pertain to fictitious documents generated by the Operational Creditor in order to make such false claim. The table of events, refers to Invoice No.15001 dated 31.08.2016 based on fictitious Purchase Order No.657 dated 12.09.2016. No such Order was ever placed by the Corporate Debtor and the Operational Creditor is required to provide the original as proof of the same.



Further, Corporate Debtor had never placed any supply Orders on Operational Creditor for winch Components or any parts whatsoever. The Invoice No.15001 dated 31.08.2016 has a mention of Order No.657 dated 12.09.2016 which is also post-dated. Similarly, on the Invoice No.15001 of 31.08.2016, the part number reference details: SEP-2707126-1 of wire rope are fake/imaginary and fraudulently generated by Operational Creditor for use of these malicious documents with clear intention of arm twisting, cheating and black mailing the Corporate Debtor.

- (5) It is alleged that the Operational Creditor has committed serious violation of RBI Guidelines and FEMA regulations by raising fake invoice and demanding payments for non-supply of good in foreign currency.
- (6) The Corporate Debtor further submits that the Operational Creditor has suppressed material facts in as much as they have not mentioned several pending court cases relating to the parties herein. The following cases are pending before several courts between the parties to these proceedings, namely CC 2856/2017, CRL P 9396/2017 and WP 48325/2017. Since the Petitioner did not succeed in the above case, the present case has been filed on untenable grounds. Hence, the intention of the Operational Creditor is highly malicious and criminal in nature.
- (7) It is further stated that the Managing Director of the Corporate Debtor has good credentials with a good name in the automotive sector in India. As a matter of fact he has setup a full-fledged manufacturing unit for winches under Make in India programme in Bangalore rural offering the product to the Indian Defence sector through leading automotive manufacturers namely TATA MOTORS and ASHOK LEYLAND.



4. The Petitioner has filed a rejoinder dated 23.04.2019, by inter alia stating are as follows:

(1) The Operational Creditor supplied 60 ropes to the Corporate Debtor.

Upon supply of the ropes, the Operational Creditor raised an Invoice No.15001 on the Corporate Debtor. The Corporate Debtor had collected the ropes after the payment of required customs duty and it is evident from an email dated 16.08.2016 sent by the Corporate Debtor to the Operational Creditor confirming that they have received the Lidan invoices and also paid the customs duty and cleared 60 nos. of ropes.

(2) As the Corporate Debtor failed to make the payment even after various reminders, the Operational Creditor issued a notice in Form- 4 on 16.01.2018 as per the provisions of the Code. The Corporate Debtor has replied to the said notice via email on 23.01.2018. However, it did not raise any dispute and failed to make outstanding amount.

(3) The learned Counsel for Petitioner has relied upon the following judgments:

- a. *Surendra Trading Company vs. JuggigalKamlapat Jute Mills Company Ltd. and others*, AIR 2018 SC 186.
- b. *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited*, (2018) 1 SCC 353.
- c. *AVI Steel Traders vs. Commissioner of Central Excise*, 2010 SC Online Del 2412.
- d. *M.T.Khan and others Vs. Govt. of A.P. and Others*, (2004) 2 Supreme Court Cases 267.
- e. *K.S.Satyanagarayana vs. V.R.Narayana Rao*, (1999) 6 Supreme Court Cases 104.
- f. *JatinKoticha vs. VFC Industries Pvt. Ltd.*, (2008) 2 Bom CR 155.

g. *Olive Tree Trading Pvt. Ltd. vs. F.lli. De Cecco Di Filipro, (2018) 3 AIR Bom R 419.*

5. Heard Shri John Paul A., learned Counsel for the Petitioner and Shri Thomas V. Peter, and learned Counsel for the Respondent. We have carefully perused the pleadings of the parties and the extant provisions of the Code.
6. Since the Corporate Debtor has denied the impugned claim itself apart from making several material defects, even the in the petition, as briefly mentioned supra, it is necessary to examine whether any prior Agreement exists between the Petitioner and the Respondent in order to raise any invoice on the Corporate Debtor. In this connection, it is relevant to advert to the Sub-Contracting and Manufacturing Agreement executed on 07.09.2015 between Sepson India Private Limited ('Company') and Transvahan Technologies India Private Limited ('Corporate Debtor'), wherein the following terms and conditions are interalia, mentioned:
 - a. Sepson India Private Limited is a subsidiary of Sepson AB, a Swedish Company, who is engaged in the business of designing, manufacturing and marketing high quality and heavy duty vehicle mounted winches worldwide.
 - b. The Company is engaged in the business of marketing/manufacture/import/assembly ['Business'] of winches ['Product'] under exclusive license from Sepson AB ['Licensor'] for the territory of India.
 - c. Transvahan has close business relation with the Sepson AB since 2007 and has provided its valuable services in developing and expanding Sepson AB's business in India.
 - d. The Company has received a large order from Tata Motors Limited ('Tata Order') regarding the Winch model 6331-081 with accessories to be mounted on vehicles produced by Tata Motors Limited and



Transvahan has offered to provide its expertise and competence to the Company to fulfil the Tata Order.

- e. Based on the above, the Company has agreed to engage the services of Transvahan for the purpose of fulfilment of Tata Order and the Parties hereto now wish to record their understanding with respect to fulfilment of Tata Order in form of the Agreement.
 - f. In the Definitions, 'Affiliate' with respect to any specified person means any other person who, directly or indirectly, controls, is controlled by, or is under common control with such person, through one or more intermediaries or otherwise, directors, promoters and employees; in case of natural persons, his/her Relatives shall also be deemed to be Affiliates of such natural persons.
 - g. Clause 12 of the said Agreement deals with the Delivery Term and Payment Conditions.
7. The Corporate Debtor has also stated that Sepson India Private Limited (SIPL) has received large order from Tata Motors Limited for the supply of winches ('Tata Order'). For compliance of the Tata Order, SIPL has entered into a Sub-Contracting and Manufacturing Agreement as mentioned above. It is also agreed that the Operational Creditor is the affiliate of Sepson India Private Limited. It was also contended that there was no bar on SIPL to get the supply of Swedish Components under the Agreement from its Parent Company Sepson AB and/or its affiliates.
8. It is stated that the Corporate Debtor has agreed to provide services exclusively to SIPL and also agreed to act as an exclusive manufacturing contractor of SIPL and to assemble the Swedish components with Indian components. Therefore, as per above Agreement, the duty of SIPL was to show the Indian/Swedish components to the Corporate Debtor. However, it is stated by the Petitioner that as a '**mutual understanding**', instead of SIPL, the



Corporate Debtor had ordered for supply of ropes ,which is a spooled component for winches (Ropes) from Sepson AB so that the Corporate Debtor can in turn supply the same. Therefore, it is contended that the Ropes were supplied to the Corporate Debtor, as per the above terms of Agreement and thus there is no Agreement exists between the Petitioner and the Respondent with regard to the impugned claim/transaction and payment terms except a '**mutual understanding**'.(which is not placed on record to examine) It is also agreed that the Operational Creditor was in the capacity of Affiliate as per the Agreement dated 07.09.2015 as mentioned above.

9. As per the email dated 16.08.2016 addressed to the Operational Creditor, the Corporate Debtor has also expressed confusion about the Freight Forwarder from Sweden. The said email reads as under:

"Dear Mr Gustav,

We were quite confused as Your Freight Forwarder from Sweden kept sending us documents with different names and finally gave copies of Lidan invoices to us. Based on this, we paid customs duty and cleared 50 Nos. Ropes last week.

As we have been informing, all local suppliers are now demanding full payment against delivery and even delaying supplies. Only after we receive Sandfits Parts, we would be able to commence production.

We would meet at Hotel for discussions.

Best Regards

Venkat"

10. The Demand Notice dated 16.01.2018 in question , though not given in a prescribed format, reads as under:

"Dear Sir,



Lidan Marine, hereby, provides notice for repayment of the unpaid amount of SEK 2,48,594.00 (equivalent to INR 20,01,181.7) that is in default as reflected in the invoices attached to this notice.

In the event you do not repay the debt due to us within ten days of receipt of this notice, we may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process under section 9 of the Code.

Yours Sincerely,

Lisa Ljundahl”

11. The Corporate Debtor ('Respondent') has issued a reply dated 23.01.2018 by requesting them to provide original copy of the invoice acknowledged by them , which reads as under:

“Dear Sir,

This refers to your e-mail dated 18th Jan 2018 calling upon us for repayment of invoice amount. On perusal of the enclosed invoices, we are unable to correlate any of the deliveries from your Company.

Hence, we request you to provide us with original copy of invoice acknowledged by us and a copy of the Airway Bill along with the Airfreight arrival documents including delivery notice.

On receipt of the above documents, we would be in a position to appreciate the demand for our suitable action.

Yours sincerely,

For Transvahan Technologies India Pvt Ltd

SR Venkatesan

Managing Director”

12. As rightly contended by the Respondent, the impugned Invoice No.15001 dated 31.08.2016 is in dispute. Therefore, the Tribunal cannot enter into the disputed question of material facts. As stated supra, the cases are also pending between main parties, namely CC 2856/2017, CRL P 9396/2017 and WP 48325/2017, which would

definitely have a bearing on the instant application. The Petitioner also failed to substantiate the contention that the Corporate Debtor is commercially insolvent. On the contrary, the Corporate Debtor has contended that it is a MSME Company and it is solvent and they have raised valid substantially dispute as detailed supra. The alleged mutual Agreement for supply of goods in question is not produced by the Operational Creditor, in order to make any claim, and thereafter to file a petition before this Tribunal under the provisions of the Code. It is a settled position of law that the provisions of Code cannot be invoked for recovery of outstanding amount but it can be invoked to initiate CIRP for justified reasons.. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*¹, it was inter alia, held that IBC, 2016 is not intended to be substitute to a recovery forum.. In another latest judgement rendered in *Transmission Corporation of A.P. Ltd. Vs. Equipment Conductors and Cables Ltd.*,² Hon'ble Supreme Court of India has, inter alia, held that existence of undisputed debt is sine qua non for initiating CIRP. As per para 34 of judgement, it is stated that Adjudicating Authority, while examining an application filed under Section 9 of Code, will have to determine:

- i. Whether there is an 'operational debt' as defined exceeding Rs.1 Lakh?
- ii. Whether documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
- iii. Whether there is existence of dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed

¹(2018) 1 SCC 353

²(CA No.9597 of 2018) dated 23rd October, 2018, (2018) 147 CLA 112 (SC)



before receipt of demand notice of the unpaid operational debt in relation to such dispute?

If any one of aforesaid conditions is lacking, the application would have to be rejected.

13. Therefore, the Petitioner failed to make out any case to initiate a case under the provisions of the Code and the dispute exists between the parent Company of Operation Creditor and the Corporate Debtor. Therefore, the Petitioner failed to make out any case to initiate a case under the provisions of the Code and the dispute exist between the parent Company of Operation Creditor with the Corporate Debtor. Hence, the petition is liable to be dismissed.
14. In the result, C.P.(IB) No.73/BB/2018 is hereby dismissed. However, this order will not come in the way of the Petitioner to invoke any other remedy available to it under any other law so as to redress its grievance. No order as to costs.



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi