IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH, CHENNAI

IBA/473/2019 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of ***M/s. Truefix Media Transformation Pvt. Ltd.***

M/s. NETCON TECHNOLOGIES PTE LTD.

... *Operational Creditor*

-Vs-

M/s. TRUEFIX MEDIA TRANSFORMATION PVT. LTD

... *Corporate Debtor*

Order delivered on 12th September, 2019

CORAM :

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor	:	*Mr. Nithyavendhan, Counsel*
For Corporate Debtor	:	*Mrs. Indhu Karunakaran, Counsel*

ORDER

Per: **CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**

1. Under Adjudication is IBA/473/2019 that has been filed by ***M/s. Netcon Technologies Pte. Ltd.*** (hereinafter referred to as '**Operational Creditor**') under Section 9 of

the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against ***M/s. Truefix Media Transformation Pvt. Ltd.*** (hereinafter referred to as **'Corporate Debtor'**). It is noted that the previous name of the Corporate Debtor was *M/s. Truefix Festival Marketing Distribution Pvt. Ltd.* The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Heard the Counsels for the Operational Creditor, the Corporate Debtor and perused the pleadings including the documents placed on file.

3. The Operational Creditor has claimed an amount of **USD 31,621** (US Dollars Thirty One Thousand Six Hundred and Twenty One Only), i.e. *USD 19,658.30* towards principal due and *USD 11,962.83* as interest,

calculated @ 18% from 24.10.2015 till date of filing of the Application as outstanding against the Corporate Debtor, which the Corporate Debtor has failed to pay.

4. It is placed on record that the Operational Creditor viz., M/s. Netcon Technologies Pte Limited raised four Invoices for the goods delivered pursuant to the Purchase Order dated 08.09.2015 issued by the Corporate Debtor. The details of the Invoices and the amount claimed to be in default are mentioned at pages 4 and 5 of the typed set filed with the Application.

5. The Counsel for the Operational Creditor has submitted that pursuant to the Purchase Order dated 08.09.2015, the Operational Creditor has raised four Invoices, two dated 08.10.2015 and another two dated 23.10.2015 and subsequently, from the period 09.09.2016 to 16.03.2017, the Corporate Debtor has made part payments to the Operational Creditor.

6. The Counsel for the Operational Creditor has referred to the e-mail communications dated 05.08.2017, 19.09.2017, 12.04.2018, 18.09.2018 and 30.10.2018, which are placed at page Nos.29 to 39 of the typed set filed with the Application. It is noted that these communications were made by the Corporate Debtor to the employees of the Operational Creditor as well as to one Mr. Mahalingam Ramasamy, who happens to be a non-resident Director of the Operational Creditor and the Managing Director of M/s. Netcon Technologies India Private Limited at Coimbatore, which is the holding company of the Operational Creditor. If the communication dated 05.08.2017 is taken into consideration, the same clearly proves that the present pending balance of USD 19658.30 was getting delayed and a request was made by the Corporate Debtor for extension of time for paying the balance due. The same is the position of the communication dated 19.09.2017 wherein it is mentioned that USD 19,658 is due to the

Operational Creditor, for supply of Red Camera and various related accessories. In the communication dated 12.04.2018, it is recorded that the Corporate Debtor is really sorry for the delay caused in making the payment to the Operational Creditor. Similarly, under communications dated 18.09.2018 and 30.10.2018, the Corporate Debtor prayed for time for making balance payments to the Operational Creditor.

7. The Counsel for the Operational Creditor has referred to the Purchase Order dated 08.09.2015 placed at Page No.15 of the typed set filed with the Application, which is not disputed by the Corporate Debtor and under the heading *"terms and conditions"*; payment terms are "*back to back from IDDS (customer of Corporate Debtor) and any deduction by IDDS for delay in delivery will be to your account.*" In the column of the "*taxes*", it is provided that the *total price inclusive of freight.*

8. The Counsel for the Operational Creditor has also referred to the Invoices as mentioned above wherein it has been stated that in case of any tax, GST / other statutory levies, if any, like withholding tax, customs duty, clearing charges etc., will be paid by the Corporate Debtor.

9. The Counsel for the Operational Creditor has referred to the documents placed at page 41 of the Rejoinder filed by the Operational Creditor which is a portion of the balance sheet of the Corporate Debtor for the year ending 31.03.2017 wherein under the heading *"Note No.11"*, titled *"Trade Receivables"*. As on 31st March 2016, there was receivables amounting to Rs.36,84,444/- and as on 31st March, 2017 the same is shown as '*Nil*', which means that the amount has been received by the Corporate Debtor during the year 2016-17 from its customers. However, the Corporate Debtor under Para 12 of its Reply has stated that it had not yet received the

entire payment from the IDDS, which is contrary to the balance sheets as recorded previously.

10. The Counsel for the Operational Creditor has referred to the Demand Notice dated 15.02.2019 issued under Section 8 of the I&B Code, 2016 wherein a demand of USD 31,311 was made as outstanding by the Operational Creditor from the Corporate Debtor. In reply to the said Demand Notice, the Corporate Debtor has stated that it has not purchased the goods as per the Invoice mentioned by the Operational Creditor, and hence, they are not liable. However, under Para 11 of its counter, it has been mentioned that the payment of USD 27,559 was made as part payment to the accounts of the Operational Creditor and further stated that this was done on the direction of holding Company viz., M/s. Netcon Technology India Private Limited at Coimbatore.

11. The Operational Creditor has complied with Section 9 (3) (b) of the I&B Code, 2016, by filing Affidavit. Copy of the Affidavit is placed at pages 45 to 47 of the typed set filed with the Application wherein under Para 9, it has been deposed that the Corporate Debtor has failed to bring into notice of the Operational Creditor an existence of a dispute or a pendency of a suit or arbitration proceedings. The Operational Creditor has not complied with Section 9 (3) (c) of the I&B Code, 2016. In this regard, the Counsel for the Operational Creditor has relied upon the judgement of the Hon'ble Supreme Court passed in ***Macquarie Bank Limited Vs. Silpi Cable Technologies Ltd.***, in CA 15135/2017 dated 15.12.2017, wherein it was held that the requirement of the certificate from the financial institution is not mandatory. In the facts and circumstances of the case, the Operational Creditor is hereby exempted from producing the certificate from the Bank as required under Section 9(3) (c) of the I&B Code, 2016.

12. The Corporate Debtor has filed the counter wherein it has been stated that the Corporate Debtor is not *privy* to the contract with the Operational Creditor. The Counsel for the Corporate Debtor has referred to the Purchase Order Nos. Truefix/15-16/MGR/001 and Truefix/15-16/MGR/002 dated 10.08.2015 and 21.08.2015 respectively which are placed at pages 11 and 12 of the typed set filed with the Counter, and submitted that the Corporate Debtor originally has placed the order with M/s. Netcon Technologies India Pvt. Ltd. at Coimbatore, which is the holding Company of the Operational Creditor. There is mention of the Managing Director viz., Mahalingam Ramasamy of M/s. Necton Technologies India Pvt. Ltd. who also happened to be the Director of the Operational Creditor. However, the Counsel for the Corporate Debtor has submitted that her client is not aware about it.

13. The Counsel for the Corporate Debtor has referred to the e-mail communication dated 07.09.2015 placed at

page No.22 of the typed set filed with the Counter which has been sent by one Mr. Ramesh, who is one of the staff of M/s. Netcon Technologies India Pvt. Ltd., to one Mr. Raam Puthran, who happened to be the staff of M/s. Red Digital Cinema (Company through which Operational Creditor supplied materials to the Corporate Debtor), thereby requesting to register the Singapore entity and to provide the revised proforma invoice, the copy of the said communication was marked to the Director of the Corporate Debtor viz., Mr. Jayebal Ponnusamy. There is another communication of the same date wherein it has been recorded that the Purchase Order be treated as cancelled and it was made clear that an amended Purchase Order from Singapore entity will be sent in the next mail.

14. The Counsel for the Corporate Debtor has explained that M/s. Netcon Technologies Pte Ltd., has got registered at Singapore, which as per the Counsel for the Operational Creditor is the wholly owned subsidiary of

M/s. Netcon Technologies India Private Limited at Coimbatore. The holding Company on behalf of the Corporate Debtor got amended the Purchase Order No. Truefix/15-16/MGR/002 dated 21.08.2015 for the purpose of supply of the particular material which was to be purchased from M/s. Red Digital Cinema by the Operational Creditor for supply to the Corporate Debtor. In other words, the supply of materials was organized by M/s. Netcon Technologies India Pvt. Ltd. through its subsidiary viz., M/s. Netcon Technologies Pte Ltd., who is the Operational Creditor, pursuant to this arrangement, the Corporate Debtor has amended the Purchase Order No. Truefix/15-16/MGR/002 dated 21.08.2015 and issued amended Purchase Order No. Truefix/15-16/MGR/003 dated 08.09.2015, which was placed with the Operational Creditor viz., M/s. Netcon Technologies Pte Ltd., directly, mentioning the name of Mr. Mahalingam Ramasamy, who also represents the holding company viz., M/s. Netcon Technologies India Pvt. Ltd., Coimbatore. It is also submitted that the Corporate Debtor has obtained Import Export Code (IE Code) (0415021723) in order to facilitate import of the goods which is the subject matter of dispute and clearance of the same by complying with the Customs formalities and payment of the applicable custom duty. There is no evidence to demonstrate the dissent of the Corporate Debtor in respect of this arrangement of supply of the goods covered by the transaction through the subsidiary company in Singapore viz., Netcon Technologies Pte Ltd, the Operational Creditor. Thus, the Corporate Debtor is well aware that they are dealing with Netcon Technologies Pte Ltd., which is the Operational Creditor.

15. The Counsel for the Corporate Debtor has also referred to the communication dated 09.09.2015 sent by the Managing Director viz., Mr. Mahalingam Ramasamy of M/s. Netcon Technologies India Pvt. Ltd. to the Corporate Debtor stating that their Indian Company will pay the advance to the Corporate Debtor to enable them

to pay the customs duty which can be returned after the Corporate Debtor gets payment from the IDDS, who is the end user customer of the Corporate Debtor. The Counsel for the Corporate Debtor has further explained that Rs.10 Lakhs was paid by the Managing Director of M/s. Netcon Technologies India Pvt. Ltd. to the Corporate Debtor for the payment of the customs duty, which was paid with the said money. The total value of the amended Purchase Order No. Truefix/15-16/MGR/003 dated 08.09.2015 is shown as USD 47,751.70 out of which as per Para 11 of the counter, the payment of USD 27,559 has been made to the Operational Creditor by the Corporate Debtor.

16. The Counsel for the Corporate Debtor has referred to the communication dated 05.11.2016 placed at page 4 of the additional typed set, which has been sent by the Operational Creditor to the Bank of the Corporate Debtor intimating that the Red Camera accessories were shipped directly to the Corporate Debtor by the manufacturer viz.,

M/s. Red Digital Cinema on behalf of Operational Creditor to reduce the transport cost and time. The Counsel for the Corporate Debtor has submitted that the same was cleared by the Corporate Debtor on behalf of the Operational Creditor for which the customs duty and clearing charges were paid by the Corporate Debtor. Therefore, the Corporate Debtor claims that out of balance amount, USD 13,128.67 was deducted towards customs duty and clearance charges and USD 13,128.67 towards the penalty upto 5% of the order value a week on delayed delivery.

17. The Counsel for the Corporate Debtor has referred to the envelope filed at page No.5 of the additional typed set which shows the reason for non-delivery of notice on the Operational Creditor as "moved" and endorsed as "RTS" in red marker. Further, at the left corner of the envelope, above the address of the sender, an endorsement is made in black ink as *"Company Remove"*,

which is contrary to the marking made on the envelope with the red ink i.e., "moved".

18. Counsel for the Corporate Debtor has submitted that the Operational Creditor does not exist physically. However, it is noted that the Application filed under Section 9 of the I&B Code, 2016 by the Operational Creditor discloses the same address which is written on the envelope as referred above. At page Nos.6 and 7 of the additional documents filed, there is a Track Delivery Report which shows that the envelope has not been delivered, but, returned to the Corporate Debtor. Further, at page Nos.8 and 9 of the same additional typed set of documents, the Corporate Debtor has given the details with regard to the payment of the customs duty and clearing charges. Besides this, the document placed at page No.9 of the additional typed set indicates the details of delay caused in effecting the delivery of the material. At this stage, the Counsel for the Operational Creditor has raised an objection with regard to the document

placed at page No.9 of the additional typed set and stated that the document is self serving and was not provided to the Operational Creditor. However it was a condition precedent that if IDDS will deduct from the amount payable to the Operational Creditor on account of delay, then the responsibility would be of the Operational Creditor. There is no noting on record to show that IDDS has deducted any amount on account of delay.

19. During the course of the hearing, a query has been raised by this Bench to the Counsel for the Corporate Debtor that, whether there is any correspondence, for extension of time and with some terms and conditions as provided in the Purchase Order and the deductions claimed, was made to the Operational Creditor. The Counsel for the Corporate Debtor has fairly admitted that there is no correspondence to that effect. However, it is submitted by the Counsel for the Corporate Debtor that there is nothing due and payable and there is a dispute.

It is further stated that the balance sheet of the Operational Creditor does not reflect receivables.

20. The Counsel for the Operational Creditor in his reply has referred to letter dated 04.11.2016 that was sent by the Operational Creditor to the bank of the Corporate Debtor, wherein the Corporate Debtor has written to Mr. Mahalingam Ramasamy, the Director of M/s. Netcon Technologies India Pvt. Ltd., which goes to state that the Bank of the Operational Creditor needs to establish the compliance with regard to the relationship between the Operational Creditor and Red Digital Cinema, which has sent the material on behalf of the Operational Creditor directly to the Corporate Debtor. In the said communication, at point no. 3, it is stated that copies attached to the email was Red Digital Camera Invoice, Operational Creditor Invoice and BOE (Bill of Entry) Copy. This also demonstrates that the Corporate Debtor had direct relationship with the Operational Creditor.

21. The Counsel for the Operational Creditor has also made a reference to the communication dated 03.09.2016 whereby the Corporate Debtor has written to the Operational Creditor, wherein the Purchase Order is mentioned as Truefix/15–16/MGR/003, which is the subject matter of the present case and had expressed sincere regrets for the delay in clearing the overdue of USD 19,658 towards the balance for the supply of RED EPIC camera and in the said communication nothing reflects about any dispute between the Operational Creditor and the Corporate Debtor, as contended by the Counsel for the Corporate Debtor.

22. The Counsel for the Operational Creditor has referred to the Invoice dated 10.06.2015, raised by Red Digital Camera on behalf of the Operational Creditor, which clearly demonstrates that the Red Digital Cinema has sent the material on behalf of Operational Creditor to the Corporate Debtor. This clearly establishes the relation between the Operational Creditor and the Corporate

Debtor. The delivery of the goods is reflected in the document placed at page 18 of the additional typed set filed by the Operational Creditor, which is a Bill of Entry for Customs Clearance and the Chalan for effecting payment of Customs Duty.

23. In spite of repeated requests and reminders through a series of email communication from the Operational Creditors to the Corporate Debtor, the outstanding of USD 19658.30 remained unsettled which apparently resulted in initiating the present Proceedings by the Operational Creditor for recovery of the amount under IBC Insolvency and Bankruptcy Code.

24. This Tribunal has evaluated the documents submitted by both the parties and the submissions made during the arguments, and based on the averments and the documents produced, the following conclusions are arrived at:

i) The Operational Creditor has effected the supply of goods in accordance with the modified purchase order Truefix/15-16/MGR/003 issued by the Corporate Debtor.

ii) The Corporate Debtor has effected acceptance of delivery of the goods by duly complying with the procedure prescribed for clearance of imported goods in their own name after effecting payment of customs duty to the exchequer, which was paid with Advance given by holding Company of the Operational Creditors. The Corporate Debtor has no right to deduct payment of customs duty as per Purchase Order.

iii) The Corporate Debtor has not communicated in any manner whatsoever to the Operational Creditor their inability for accepting the supply effected by the Operational Creditor since they are under contractual obligation to supply the goods to IDDS (end user).

iv) The Corporate Debtor never raised any issue with regard to the delayed supply, and extension of time and the supply was accepted without any objection, which amounts to the waiver of the condition of Purchase Order and no deduction is effected by the IDDS on account of delayed delivery.

v) The Corporate Debtor acknowledged the balance amount and its liability through various mail communications and requested for time for making the balance payments and never raised any dispute. The plea of dispute is spurious, and a mere bluster, which is an afterthought and rejected.

vi) The stance of the Corporate Debtor as regards the non existence of their name in the list of receivables in the Balance sheet of Operational Creditor carries no merit since Page 48 of the Additional Document Type Set filed on behalf of the Operational Creditor forming part of letter of representation to the statutory auditors of the Operational Creditor, forming a part of the income Computation Statement in Serial No.5 Provision for doubtful debts.

> "Trade receivable – Trueflex Film Festival Marketing Distribution Pvt. Ltd." USD – 19658.30 stating as unable to collect in the subsequent year, which itself is sufficient to prove that the amount could not be collected by the Operational Creditor. The amount due from the Corporate Debtor is reflected along with other debtors in the group head "Receivables" in the Balance sheet as on 31.03.2018 at USD 130987 which are reportedly recognized at their original

invoiced amount which represents the fair values on initial recognition.

vii) Taking into account these salient points this Tribunal is of the opinion, that there exists an undisputed debt owed by the Corporate Debtor, M/s. Truefix Media Transformation Pvt. Ltd., earlier known as M/s. Truefix Film Festival Marketing Distribution Pte. Ltd. to the Operational Creditor M/s. Netcon Technologies Pte. Ltd. and consequent upon the failure to clear the Operational debt by the Corporate Debtor the Insolvency Resolution Process is triggered.

25. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Authority is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, Application is admitted and the commencement of the

Corporate Insolvency Resolution Process is ordered, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

26. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is ordered to prohibit all of the following, namely :-

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

27. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

28. The Operational Creditor has not proposed the name of IRP, therefore, Mr. J. Manivannan, is appointed as IRP, whose name has been in the Panel of Insolvency Professionals recommended by the IBBI, there is no disciplinary proceedings pending against the IRP. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed

under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

29. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

30. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016.

31. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the

concerned RoC. The address details of the IRP are as follows: -

> **Mr. J. Manivannan,**
> Reg. No. IBBI/IPA-002/IP-N00534/2017-2018/11695,
> Plot No.53B, 8/330, Vishalakshi Nagar,
> Fourth Cross Street, Santhosapuram, Chennai,
> Tamil Nadu – 600 073
> Ph: 91-99623 78774
> Email ID: equitablelegal@gmail.com

32. Order is dictated and pronounced in open Court in the presence of the Counsels for Operational Creditor and Corporate Debtor.

-SD-	-SD-
ANIL KUMAR B	**CH. MOHD. SHARIEF TARIQ**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

P. ATHISTAMANI