

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IBA/241/2019**

*(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. Shaan Technologies India Private Limited**

**M/s. V-Con Integrated Solutions Pvt. Ltd.,**  
F-141, Phase 8B, Industrial Area,  
Mohali, Punjab – 160 055

*... Operational Creditor*

-Vs-

**M/s. Shaan Technologies India Pvt. Ltd.,**  
Shop No.36, Mayura Complex,  
No. 48, DhanappaMudali Street,  
Madurai – 625 001, Tamil Nadu

*...Corporate Debtor*

*Order Pronounced on 23<sup>rd</sup> December, 2020*

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : V. Prashanth Kiran, Advocate*  
*For Corporate Debtor : G. Derrick Sam, Advocate*

**ORDER**

**Per: R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. This is an Application filed by **M/s. V-Con Integrated Solutions Private Limited** (hereinafter referred to as '**Operational Creditor**') having its Registered Office at F-141, Phase 8B, Industrial



Area, Mohali, Punjab – 160 055 in the capacity of an Operational Creditor as defined under the provisions of Sections 8 & 9 of the Insolvency & Bankruptcy Code, 2016 (in short, '**IBC, 2016**'). The Application has been filed against one **M/s. Shaan Technologies India Private Limited** (hereinafter referred to as '**Corporate Debtor**') having registered office at Shop No.36, Mayura Complex, No. 48, Dhanappa Mudali Street, Madurai – 625 001, Tamil Nadu, seeking for the initiation of the Corporate Insolvency Resolution Process (CIRP) against the said Company namely, the Corporate Debtor as defined under the IBC, 2016.

2. A perusal of the Application filed in Form-5 as specified under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 discloses that the Corporate Debtor was incorporated on 08.06.2016. The Authorized Share Capital and Paid-up Share Capital of the Corporate Debtor is stated to be ₹10,00,000/- and ₹1,00,000/, respectively.

3. Further in relation to filing of this Application on behalf of the Operational Creditor, it is stated to be filed by one Mr. Rohit Sharma as its Authorized Representative appointed vide a Special Power of Attorney dated 05.10.2018.



4. The Operational Creditor has not proposed any Interim Resolution Professional (IRP) under Part-III of the Application. Under Part-IV, the total amount debt due from the Corporate Debtor is stated to be ₹6,97,305/-. By way of details of transactions, it is stated that the Operational Creditor and Corporate Debtor is stated to have entered into a Services Agreement dated 26.08.2017 and under the said Agreement, the Operational Creditor is required to provide Bulk Messaging Gateway Solution Services of SMS to the Corporate Debtor and thereby the Corporate Debtor could send SMS to its customers.

5. In relation to the services provided by the Operational Creditor to Corporate Debtor, it is stated that the Corporate Debtor has defaulted in the payment of ₹6,97,305/- payable under the invoices, the details of which have been given in Clause-2 of Part-IV of the Application commencing from 05.02.2018 and ending on 01.08.2018.

6. Further perusal of the Application also discloses that out of the seven (7) invoices specified in Clause-2 of Part-IV of the Application, the first of the four (4) invoices the payments in relation to the same are required to be made within a period of 15 days from the dates of the respective invoices. The last three (3) of the invoices are



required to be paid within a period of 30 days within the date of raising the invoices. The documents filed in support of the Application specified in Clause-8 of Part-V are as follows: -

- i. Services Agreement dated 26.08.2017.
- ii. Duplicate copies of all the pending invoices raised by Operational Creditor.
- iii. Demand Notice under Insolvency & Bankruptcy Code, 2016 dated 26.12.2018 and documents annexed therewith along with postal receipt and delivery report.
- iv. Copy of Statement of Account.

7. Upon notice issued by this Tribunal to the Corporate Debtor, it is seen from the record of proceedings that the Corporate Debtor has duly entered appearance to defend its cause and also filed a Counter Affidavit in relation to the Application.

8. It is also seen from the record of proceedings that even though both the parties had sought for time to enable settlement, however, the parties were not able to enter into any amicable settlement. In the circumstances, upon the request of the parties the matter was taken up for arguments on 07.12.2020.

9. Heard the submissions of the parties in detail. During the course of submissions, the Ld. Counsel for the Petitioner drew

attention of this Tribunal to the relevant clauses as contained in the Services Agreement dated 26.08.2017 annexed as Annexure-II. Particular attention of this Tribunal was drawn in relation to the Scope of Services as contained in Clause-2 of the said Agreement. Further attention was also drawn to Clause-6 in relation to Prices and Payment.

10. Further, Annexure-C to the said Agreement dated 26.08.2017 was also pointed out by the Ld. Counsel for the Operational Creditor in relation to the amount that can be charged as to the services provided by the Operational Creditor to the Corporate Debtor. Specifically, the Ld. Counsel for the Operational Creditor drew the attention of this Tribunal to the caption as provided under Annexure-C in General Terms with respect to Charges.

11. Relying on the Agreement and particularly in relation to the said Clause as above, it was pointed out by the Ld. Counsel for the Operational Creditor that irrespective of any delay, incomplete message or non-receipt of the message, the Corporate Debtor is bound to pay the agreed amount and not on the basis of actual delivery of SMS for the customers of the Corporate Debtor. Further, relying upon the Agreement, Ld. Counsel for the Operational Creditor



refers to the invoices annexed along with the Application from Page Nos. 38 to 44 of the Application.

12. It is also pointed out by the Ld. Counsel for the Operational Creditor that initially the amount charged was at the rate of INR 0.076. Subsequently by virtue of mutual agreement, the rates for SMS were charged at the rate of INR 0.105 as between the parties. The memo of calculation has also been filed, to which the attention of this Tribunal was drawn by the Ld. Counsel for the Petitioner at page No.45 of the typed set to the Application.

13. The Demand Notice as required under Section 8 of the IBC, 2016 has been annexed along with the Application as Annexure-I, which is dated 26.12.2018. The amount claimed as default in the Demand Notice is reflected as ₹6,97,305/-. The postal receipt in relation to the dispatch of Demand Notice as well as the Tracking Consignment Report issued by India Post correlating with the dispatch notice has also been enclosed. Perusal of the same discloses that the consignment/item has been delivered on 31.12.2018.

14. Despite receipt of the Demand Notice it is the submission of the Ld. Counsel for the Petitioner that the Corporate Debtor has not



chosen to send any reply raising any pre-existing dispute nor the amount demanded in the Demand Notice has been paid and, in the circumstances, the Operational Creditor has chosen to initiate the proceedings before this Tribunal by way of this Application.

15. Ld. Counsel for the Operational Creditor while summing up his arguments also pointed out to the documents as annexed along with the Counter Affidavit filed by the Corporate Debtor, to buttress his arguments, that in relation to the enhancement of the rates, the Corporate Debtor is fully aware of the same and has also consented to the same.

16. On its part, Ld. Counsel for the Corporate Debtor chose to rely on the Agreement disputing the quantum of liability as claimed by the Operational Creditor against the Corporate Debtor.

17. In this connection, Ld. Counsel for the Corporate Debtor pointed out to Clause-6 read along with Annexure-C of the Agreement dated 26.08.2017 that the Operational Creditor is required to charge to the Corporate Debtor at the rate of 0.078p only for an SMS and not the enhanced rate which is sought to be claimed.



18. The further contention of the Ld. Counsel for the Corporate Debtor that in relation to fees payable for services, it can be only upon mutual agreed terms as agreed between the parties or only by change in TRAI Guidelines and since none of the conditions has occurred in the present case, the Operational Creditor could not have charged enhanced rate of INR 0.105p per SMS. In the circumstances, the amount as claimed is not agreed to by the Corporate Debtor and there is a dispute in relation to the same.

19. It is also further contended by the Ld. Counsel for the Corporate Debtor that while the first of the four (4) invoices as given in Page Nos.38 to 41 of the typed set to the Application has been charged on the basis of delivery, whereas in relation to the invoices annexed along with the Application from Page Nos.42 to 44 has been charged based on the "Submission Basis" which was also not agreed to by the parties.

20. In the circumstances, it is contended by the Ld. Counsel for the Corporate Debtor that the Corporate Debtor was forced to send e-mail dated 10.07.2018 wherein the attention of the Operational Creditor has been drawn by the Corporate Debtor in relation to the

rates charged by the Operational Creditor as well as the amounts being charged on the basis of submission and not on delivery basis.

21. However, in order to countenance the above arguments as put forth by the Ld. Counsel for the Corporate Debtor, it is submitted by the Ld. Counsel for the Operational Creditor that in any case vide e-mail dated 08.02.2019 a sum of ₹3,06,075/- is admitted by the Corporate Debtor itself as payable in relation to the services provided by the Operational Creditor to the Corporate Debtor by way of an e-mail as per the Corporate Debtor termed as "Negative Confirmation". Since the said amount exceed ₹1 lakh and satisfies the pecuniary limit prescribed under the provisions of the IBC, 2016 at the relevant point and this Application was filed on 11.02.2019, the CIRP is required to be initiated and for which purpose the Counsel for the Operational Creditor relies on the judgement of the Hon'ble NCLAT in **Consultants India Pvt. Ltd -vs- Nitesh Estates Limited** in *Company Appeal (AT) (Insolvency) No.720 of 2018 dated 24.07.2019.*

20. From the facts, as can be discerned from the above as well as from the pleadings and typed set filed by the respective parties, it is seen that despite an opportunity provided under the provisions of the



IBC, 2016 to the Corporate Debtor under Section 8, either to bring on record a notice of dispute in relation to the entire amount claimed by the Operational Creditor or in the alternative to pay the amount claimed and even in case of partial acceptance and partial refutation to pay the amount accepted and dispute the balance by way of reply, the Corporate Debtor has not chosen to avail any of the options but to remain silent. Even assuming, as contended by the Corporate Debtor presently that a sum of ₹3,06,075/- by way of Negative Confirmation is the balance payable and the remaining amount is disputed, even the said amount admitted has not been remitted either prior to the Application nor despite when the matter is pending before this Tribunal for long i.e., since February, 2019. Even during the course of the hearing on 07.12.2020 this Tribunal queried as to why the parties despite expressing in the earlier hearings that they would like to amicably settle the matter and why they have chosen not to, however, it was represented by the Ld. Counsel for the Operational Creditor that for the small amount as claimed, the Corporate Debtor has sought for instalment payments of ₹ 50,000/- every month which clearly points out to the status of solvency of the corporate debtor.

21. Thus, it is seen that in the absence of any reply to the Demand Notice, and even according to the Corporate Debtor, the sum payable



exceeds ₹1 lakh as prescribed under Section 4 of the IBC, 2016 at the relevant point and all the compliances have been duly made by the Operational Creditor as required under the provisions of the IBC, 2016, this Tribunal is not having any other option, in the absence of any settlement coming forth between the parties, to **admit** the Petition and to initiate the CIRP in relation to the Corporate Debtor.

22. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between 26<sup>th</sup> November 2020 till 31<sup>st</sup> December 2020 appoints **Ms. Uthukuli Venkata Rao Sujatha**, with Registration No. **IBBI/IPA-001/IP-P01078/2017-18/11791**, (e-mail id: **suja2122@gmail.com**) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,



2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.



23. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

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

24. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:



- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

25. The Operational Creditor is directed to pay a sum of **₹2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to



the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

*MS / Raymond*