BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B) No. 258/9/NCLT/AHM/2018

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**
Hon'ble Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.08.2019

Name of the Company: Globetrans Worldwide Pvt. Ltd.
V/s.
Haldyn Glass Ltd.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER

None appeared on behalf of the parties.

The Order is pronounced in the open court, vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 27th day of August, 2019

MANORAMA KUMARI
MEMBER JUDICIAL

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 258/9/NCLT/AHM/2018

In the matter of:

Globetrans Worldwide Private Limited
108, The Avenue
Opp. Leela Hotel
Sahar Airport Road
MUMBAI 400 059 : **Petitioner**
Operational Creditor

Versus

Haldyn Glass Limited
Village Gavisad
Padra
District Vadodoara
Gujarat State : **Respondent**
Corporate Debtor

Order delivered on 27th August, 2019.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Advocate Mr. Yogin A. Bhambhani for the respondent
Advocate Mr. Hiren J. Trivedi for applicant

ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. M/s. Globetrans Worldwide Private Limited filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"].

2. The claim of the Petitioner is that Corporate Debtor, namely Haldyn Glass Limited, appointed the petitioner as customs clearance agent as per the terms of engagement agreed as per email dated 4th August, 2017 annexed to the application marked Annexure "B". In or around September, 2017 the corporate debtor required the operational creditor to assist in the customs clearance of a consignment of Soda Ash which had been purchased by way of High Seas Sale Agreement dated 20th July, 2017 during its voyage from Istanbul (Turkey) to Hazira, Dist. Surat, Gujarat State.

3. On 14th August, 2017 the consignment arrived and the containers wherein the Soda Ash had been stored were returned on 11th September, 2017.

4. As per the terms of the shipping agreement the corporate debtor had with its carrier, M/s. MTS Logistic ve Tasimacilik Hizmetler Ticaret A.S., the aforesaid containers were to be returned within 14 days of arrival i.e. on or before 28th August, 2017. However, as the containers were returned only on 11th September, 2017 the carrier levied container detention charges of Rs. 12,32,391/-.

5. As per the terms contained in the email dated 4th August, 2017 all statutory charges including container detention charges were payable by the corporate debtor on actuals. Accordingly, the operational creditor cleared the container

detention charges payable to the carrier by the corporate debtor and raised invoice dated 18th September, 2017 inter alia for the said charges, as per the details given at Exhibits "C" and "D" attached to the application.

6. Despite being called upon to do so, the corporate debtor failed to pay the outstanding amount of Rs. 12,37,391/-. Vide letter dated 3rd November, 2017 the operational creditor confirmed the discussions between the parties wherein the corporate debtor had agreed to release the entire outstanding payment of Rs. 26,07,234/- latest by 6th November, 2017. The letter mentioned that the aforesaid amount included the shipping line detention charges and the same was accepted without demur or objection by the corporate debtor.

7. Various emails were exchanged between the operational creditor and corporate debtor during the period October 2017 and January, 2018, whereby the operational creditor reminded the corporate debtor about the long overdue debt. Vide one such email dated 18th January, 2018 the corporate debtor alleged that the container detention charges levied by the carrier were a default on the part of the operational creditor and, therefore, the corporate debtor was not liable to pay the same. Vide email dated 22nd January, 2018 the operational creditor clarified the reason for delay for clearing

the shipment and pointed out as to how the same was attributable solely to the corporate debtor.

8. On 20th February, 2018 a demand notice demanding payment in respect of unpaid operational debt due was sent by the operational creditor to the respondent.

9. Vide letter dated 15th March, 2018 received by the operational creditor on 19th March, 2018 and another letter dated 15th March, 2018 received by the operational creditor on 28th March, 2018 the corporate debtor replied to the aforesaid demand notice. Vide letter dated 31st March, 2018 the operational creditor answered each of the allegations made by the corporate debtor and established as to how the same were completely baseless and frivolous.

10. According to the operational creditor, an amount of **Rs. 13,65,287/- (Rupees thirteen lacs sixty-five thousand two hundred eighty-seven only)**, principal amount being Rs. 12,32,391/- with interest at the rate of 24% per annum compounded monthly for the period from 18th September, 2017 to 28th February, 2018 is due from the corporate debtor. Date of default are described in Exhibit "A".

11. In support of its claim, the petitioner has submitted copy of the following documents: -

Exhibit No.	Particulars	Page No.
A	Detailed calculation of operational debt	13
B	E Mail dated 4.8.2017	14
C	Bill of lading dated 18.9.2017	18
D	Invoice dated 18.09.2017	20
E	Letter dated 03.11.2017	25
F	E mail exchanged between the parties	26
G	Demand notice dated 20.02.2018 under IB Code along with proof of service	36
H	First reply dated 15.03.2018 sent by the corporate debtor	49
I	Second reply dated 15.03.2018 sent by corporate debtor	52
J	Letter dated 31.03.2018	54
K	Bank statement of the applicant to show that operational debt is yet unpaid	59
	Board resolution dated 28.03.2018 authorising Mr. Dattaram Karane to initiate IB proceedings against the corporate debtor	105
	Proof of service of copy of the petition on the corporate debtor	Separate letter

12. The respondent/corporate debtor filed reply in affidavit stating that there is a serious dispute regarding unpaid operational debt being claimed in the application. That, the corporate debtor had already informed and given notice to operational creditor.

13. It is further submitted by the respondent that the dispute was brought to the notice of the operational creditor since 2017 and also by e-mail dated 18th January, 2018 which was much before issuance of demand notice in form 3 dated 20.02.2018. That, the respondent company is a going company, established in the year 1991 having 875 workmen and a financially sound company. That, there is no question of withholding anyone's money without reason or dispute. That, as per provisions of section 9(3) (b) affidavit to the effect that there is no notice given by corporate debtor

relating to dispute of unpaid operational debt. That, in fact the amount in question is withheld is due to dispute existing brought to the notice of operational creditor in various meetings and also by way of written notices.

Findings:

14. Heard the learned counsels for both the sides and perused the documents submitted by the parties.

15. On perusal of the records it is found that there is pre-existing dispute as regards the debt claimed by the operational creditor towards container detention charges and interest thereon. **Page No. 27** of the application clearly shows that communication had taken place between the parties with regard to payment of container detention charges by the respondent and the respondent had raised objection for payment towards container detention charges. The dispute has been raised by the respondent by way of e-mail sometime between September, 2017 and January, 2018 i.e. much prior to issuance of notice on 20.02.2018

16. On perusal of the records it is observed that the e-mail communication dated 04th August, 2017, placed at page No. 14 to the application shows that there is a clear cut condition which reads as under: -

"Vehicle will arrive at next morning to consignee warehouse, same day cargo should be unload or else detention will applicable from next day"

17. It is pertinent to mention here that in the invoice related to the consignment in question raised by the operational creditor dated 18th September, 2017, placed at page No. 20 to the application shows that an amount of Rs. 12,32,391/- has been charged by the operational creditor. Records available in the application also shows that the operational creditor had sent reminder dated 3rd November, 2017, placed at page No. 25 to the application, calling upon the respondent to clear the detention and other statutory charges which is acknowledged by the respondent on 3rd November, 2017 itself. The e-mail communication available at page No. 26 to the application dated 22nd January, 2018 shows that the respondent had raised objection for payment against such detention charges.

18. From the above discussions it is found that the documents attached to the application itself shows that there exists pre-dispute regarding the claim amount. The e-mail communication between the two sides, placed at **page No. 26 and 27** to the application clearly shows that there is/was pre-existing dispute against the container detention charges levied on the respondent by the operational creditor vide bill dated 18.09.2017. These documents are relied by the appellant himself which itself shows that there is pre-existing dispute.

19. Since the very objective of the Code is re-organisation and insolvency resolution of corporate persons, no objective will be served by subjecting a solvent company to insolvency resolution process. Further, recovery is an individual effort by a creditor to recover its dues through a process that has debtor and creditor on opposite sides. When creditors recover their dues – one after another or simultaneously from the available assets of the firm, nothing may be left in due course. Thus, while recovery bleeds the corporate debtor to death, resolution endeavours to keep the corporate debtor alive. In fact, the I & B code prohibits and discourages recovery in several ways. In the matter of ***"Arcelor Mittal India (P) Ltd. Vs. Satish Kumar Gupta and Ors."*** the Hon'ble Supreme Court observed that "corporate debtor" consist of several employees and workmen whose daily bread is dependent on the outcome of the CIRP. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible".

20. Further, IB Code provides that while admitting an application for initiation of corporate insolvency resolution process, in addition to fulfilling other requirements, it must be supported by documentary proof of undisputed debt. The Supreme Court in ***IBA Health (P) Ltd. vs. Infodrive System Sdn. Bhd.*** (CA No. 8230 of 2010) has held that a company court should act with circumspection, care and caution must be taken and examine as to whether an

attempt is made to pressurize the company to pay a debt which is substantially disputed. IB Code is not a recovery agent and it is not reasonable to permit a party to set the law in motion and thereby bring the death of a going concern, upon which the livelihood of number of employees are dependant. That apart, it may have adverse effect on the economy, when for some individual grievances the appropriate forums are available, more so, when dispute requires trial to ascertain the entitlement of right to recover the amount as claimed or otherwise. For certain individual grievances or grudges a sound and a going concern cannot be brought to death, when livelihood of hundreds of employees are concerning. This Tribunal cannot be allowed as a recovery forum or court.

21. In view of what is discussed above, the Adjudicating Authority is of the considered view that the instant petition is not maintainable on the ground that prior to filing the application on 24th April, 2018, there is/are pre-existing dispute raised by the respondent in respect of container detention charges. In the result, Company Petition (IB) No. 258 of 2018 filed by applicant Globetrans Worldwide Private Limited is dismissed. No order as to costs. The findings or observations, if any, made in this order may not come in the way of the Petitioner establishing its claim or for the Respondent to establish its defence before any other Forum.

22. Communicate a copy of this order to the Applicant/Financial Creditor and to the respondent/Corporate Debtor.

Chockalingam Thirunavukkarasu **Adjudicating Authority** **Member (Technical)**	**Ms. Manorama Kumari** **Adjudicating Authority** **Member (Judicial)**

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