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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 12.06.2020

THROUGH VIDEO CONFERENCING
CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 10/BB/2020	For pronouncement of orders	Sec 9 of I&B code 2016	M/s Logwell Logistics & Aviation Services (OPC) Pvt Ltd	Uddyam Mukherjee, Advocate	M/s Velankani Electronics Pvt Ltd	Ajay Kumar. N

ADVOCATE FOR PETITIONER/s: Uddyam Mukherjee

ADVOCATE FOR RESPONDENT/s: Ajay Kumar
ORDER

Heard Shri Uddyam Mukherjee, learned Counsel for the Petitioner and Shri Ajay Kumar, learned Counsel for the Respondent through Video Conference.

CP (IB) No.10/BB/2020 is dismissed by separate order.


Member (T)


Member (J)

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

C.P. (IB) No.10/BB/2020
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

**Logwell Logistics & Aviation
Services (OPC) Private Limited**
RZ-4B, 1st Floor,
Palam Vihar Sector -6, Dwarka,
New Delhi – 110 075.

- Operational Creditor / Petitioner

Versus

Velankani Electronics Private Limited
No.43, Electronics City,
Phase I Hosur Road,
Bangalore – 560 100.

- Corporate Debtor / Respondent

Order Pronounced on: 12th June, 2020

Coram:

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Uddyam Mukherjee and Shri S.M Irbaz, Advocates

For the Respondent: Shri Ajay Kumar M and Shri Palakshaiah, Advocates

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P. (IB) No.10/BB/2020 is filed by Logwell Logistics and Aviation Services (OPC) Private Limited (hereinafter referred to as 'Operational Creditor / Petitioner') under Section 9 of the IBC, 2016 R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of 'Velankani Electronics Private Limited' (hereinafter referred to as 'Corporate Debtor / Respondent') on the ground that the Corporate Debtor has committed default for a total outstanding amount of Rs.16,78,006.53 (Rupees Sixteen Lakh



Seventy Eight Thousand and Six and Paise Fifty Three Only) including an interest of Rs.1,27,443.53 (Rupees One Lakh Twenty Seven Thousand Four Hundred Forty Three and Paise Fifty Three Only).

2. Mr. Hari Shankara Narayana, holding the position of Company Commercial & Operation Head has filed this Petition being authorised by Board Resolution dated 26.07.2019 passed by the Petitioner Company. Copy of the Board Resolution is annexed to the Petition.
3. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, by inter alia stating as follows:
 - (1) The Petitioner provided logistics services to the Respondent in respect of a shipment from Bangalore to Srinagar in respect of which several invoices were raised from 25.03.2019 to 12.06.2019. The amounts of the invoices being Rs.15,50,563 (Rupees Fifteen Lakh Fifty Thousand Five Hundred and Sixty Three only). Copies of the invoices are annexed to the Petition.
 - (2) The Petitioner submits that the terms of payment were communicated to the Respondent by the Petitioner vide email dated 23.03.2019 where it is stated that the payments against each invoice should be realised within 7 days from the invoice date. Copy of the email dated 23.03.2019 is annexed to the Petition.
 - (3) It is submitted that the Respondent is liable to pay interest at the rate of 24% per annum as per the invoices as the Respondent has failed to repay the amounts within a period of 7 days as agreed.
 - (4) It is submitted that the Corporate Debtor has never raised any dispute regarding the quality of the services rendered and has acknowledged all the invoice amounts in email dated 10.04.2019 which is annexed to the Petition. The Respondent has admitted delay in making payments vide email dated 15.05.2019 and has assured making the payment. Copy of the email is annexed to the Petition.
 - (5) It is submitted that after demanding payments several times by way of emails, the Petitioner issued Demand Notice dated 05.08.2019 u/s 8 of the Code, 2016. The same was delivered to the Respondent on



06.08.2019. Copy of the Demand Notice along with proof of service is annexed to the Petition.

- (6) It is further submitted that the Respondent admitted its liability to repay the debt amount and provided payment schedule for the principal amounts due vide email dated 23.08.2019 issued to the Petitioner's counsel in response to the Demand Notice. Copy of the email is annexed to the Petition.
- (7) It is submitted by the Petitioner that the said payment proposal was rejected by it vide email dated 29.08.2019 stating that the entire amounts of Rs.16,78,006.53 due and payable should be paid to the Petitioner in 3 equated instalments being 10.09.2019, 10.10.2019 and on 01.11.2019. Copy of the email is annexed to the Petition.
- (8) The Respondent has filed its statement of objections on 18.02.2020 contending that there was no acceptance of the proposal that the payments are to be made within a period of 7 days. The Petitioner's contention that there were TERMS agreed between the parties is wholly incorrect and baseless. Further, it is contended that there is no document to show that the Respondent agreed for 24% p.a. interest for delayed payments. It is also submitted that there was no discussion on payment of any interest whatsoever. That the invoices referred to by the Petitioner are insufficient to establish that there was any agreement with regard to the terms of the payment. Further, it is submitted that the Respondent has always maintained and assured to the Petitioner that the invoice amounts will be paid.
- (9) It is also stated that many of the consignments of set top boxes were supplied late which got accounted for in the next financial year, leading to a cascading effect on the payments to be received from the Doordarshan, to whom they were supplied. This was informed to the Petitioner vide E mail dated 15.5.2019.
- (10) The Counsel for the Respondent submits that the Reply to Demand Notice issued vide email dated 23.08.2019 has provided schedule for payment of the amounts due. However, the Petitioner refused the said proposal stating that the interest at 24% p.a. also needs to be paid and



the entire amounts should be paid in 3 equated instalments. It is submitted that, had the Petitioner accepted the payment schedule the entire outstanding would have been paid as per the payment schedule by now.

(11) It is submitted that the Respondent is a going concern with huge number of employees and the turnover of the Company is Rs.40 Crore. The Petitioner has unreasonably filed this petition which ought to be dismissed.

4. Heard Shri Uddyam Mukherjee, learned Counsel for the Petitioner **through Video Conference**. We have carefully perused the pleadings of both the parties and extant provisions of the Code and the Rules made thereunder.
5. On perusal of the Petition and the annexures thereto, it appears that there is a delay in making payment to the Petitioner. However, we do not find any document that indicates the existence of any agreement between the parties with regard to the terms of the payment. Similarly, but for the Invoices, there is nothing to show that interest was agreed upon to be charged at 24%, in case of delay in payment, as being charged by the Petitioner. In the absence of any Agreement and expressly laid out terms, there is no right to payment of interest at a certain rate, created in the hands of the Petitioner as per terms of its choice, and there cannot be any debt and default in respect of such interest, within the meaning of the Code, even if some interest is otherwise payable. Also, in the absence of any Agreement, there cannot be a default for delayed or non-payment of the amounts raised through invoices. One sided Invoices or E-mails cannot be a substitute for a mutual agreement. In any case there is no clear and undisputed debt, which is a sine qua non for proceeding under Section 9 of the Code as the Respondent has attributed the late payments to delayed delivery of supplies and also the exorbitant interest charged.
6. It is also well settled that the provisions of the Code cannot be invoked for recovery of outstanding amount but can be invoked to initiate CIRP for justified reasons as per the Code. The Hon'ble Supreme Court in the case of



*Mobilox Innovations Private Limited v. Kirusa Software Private Limited*¹ has inter alia held that I & B Code, 2016 is not intended to be a substitute to a recovery forum and cannot be used to jeopardise the financial health of an otherwise solvent company by pushing it into insolvency. Again, the Hon'ble Supreme Court in the case of *K. Kishan v. Vijay Nirman Company Private Limited*² clarified that the Petitioners cannot use IBC either prematurely or for extraneous considerations or as substitute for debt enforcement procedures.

7. In the present case the Petitioner has attempted to use the Code only to recover its amounts from an otherwise solvent company with a healthy turnover, having a large number of employees, and having on-going projects in hand. No case has been made out that the Corporate Debtor has become insolvent or has lost its substratum, such that it is unable to pay its debts or run its business. This is clearly against the spirit of the Code. The Respondent had the intention to repay the amount owed and was admittedly ready and willing to pay the same as per the payment schedule vide email dated 23.08.2019. The Petitioner had rejected the same by insisting on charging interest at exorbitant rates, and now wishes to enforce recovery through this Adjudicating Authority and by seeking to trigger a CIRP against the Respondent. This is especially unacceptable considering the present stress caused to the economy by the ensuing global pandemic, in which initiating CIRP against a healthy company may not be a good solution. This finding would, however, not come in the way of the two parties to settle the matter between themselves in a reasonable manner, since the Respondent has shown his willingness to repay the amounts owed with reasonable interest.
8. In these circumstances, we find no merit in the Petition, and hence Company Petition bearing C.P. (IB) No.10/BB/2020 is dismissed. No order as to costs.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

Aparna

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

¹ 2018 (1) SCC 353

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