



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI, BENCH-VI**

**CP (IB) No.3502/MB/2018**

*[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

**M/s. TRANSTEC OVERSEAS PRIVATE LIMITED**

[CIN: U72900MH2000PTC128638]

**Registered Office:** 70, Podar Chambers,  
3<sup>rd</sup> Floor, S.V. Brelvi Road,  
Mumbai-400001, Maharashtra.

**...Operational Creditor**

*Versus*

**M/s. DHEERAJ AVIATION GROUND EQUIPMENTS PRIVATE LIMITED**

[CIN: U74999MH2005PTC158271]

**Registered Office:** Plot No. A-410, TTC Industrial Area,  
MIDC Mahape, Navi Mumbai-400710.

**...Corporate Debtor**

**Date of Pronouncement: 05.01.2024**

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)**

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances:**

Operational Creditor: Adv. Sunil Kadam

Corporate Debtor: Adv. Sagar Shetty



**ORDER**

***[Per: SANJIV DUTT, MEMBER (TECHNICAL)]***

**1. Background:**

- 1.1 This Application bearing C.P. (IB) No.3502/MB/2018 was filed 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 by M/s. Transtec Overseas Private Limited, the Operational Creditor on 30.08.2018 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of M/s. Dheeraj Aviation Ground Equipments Private Limited, the Corporate Debtor.
- 1.2 The Operational Creditor is engaged in the field of manufacturing and sale of Aviation Ground Support equipment, Material Handling equipment and Cargo equipment. The Corporate Debtor is engaged in the business of designing, fabrication and manufacturing of Aviation Ground products.
- 1.3 The Operational Creditor had purchased aviation ground equipment from the Corporate Debtor during the financial year 2008-09 *vide* two invoices dated 10.07.2008 amounting to Rs.18,32,484/- including sales tax/ VAT at the rate of 12.5% amounting to Rs.2,03,609/-. Subsequently, during the financial year 2014-15, the Corporate Debtor purchased certain equipment from the Operational Creditor for a sum of Rs.33,54,823/- which included VAT of Rs.3,72,758/- at the applicable rate of 12.5%.



- 1.4 As the aforesaid amounts of sales tax/ VAT aggregating to Rs.5,76,367/- (Rs.2,03,609/- plus Rs.3,72,758/-) were not paid to the Sales Tax Authorities, the Operational Creditor had received Demand Notices from the Sales Tax Authorities. In these circumstances, the Operational Creditor treated the Corporate Debtor to be in default in respect of the aforesaid amount pertaining to the financial years 2008-09 and 2014-15.
- 1.5 The Operational Creditor issued a Demand Notice dated 26.06.2017 to the Corporate Debtor calling upon it to pay the amount in default. Since the Corporate Debtor failed to pay the amount owed to the Operational Creditor, the latter filed the present Application for initiating CIRP in respect of the former.

**2. Averments of Operational Creditor:**

- 2.1 The Operational Creditor submits that it had paid sales tax/ VAT of Rs.2,03,609/- on behalf of the Corporate Debtor for the job work of Rs.18,32,484/- in the financial year 2008-09 which was acknowledged by the Corporate Debtor in its letter dated 10.02.2017. In the said letter, the Corporate Debtor, while acknowledging the payment, had expressed readiness to reimburse the same to the Operational Creditor. Additionally, regarding the VAT liability for the financial year 2014-15, the Corporate Debtor had failed to submit Form 'C' worth Rs.3,72,759/- against the job work of Rs.33,54,823/- done by the Operational Creditor.
- 2.2 It has been submitted by the Operational Creditor that during the financial year 2014-15, the Corporate Debtor purchased certain equipment from the



Operational Creditor for a sum of Rs.33,54,823/- which included VAT of Rs.3,72,758/- at the applicable rate of 12.5%.

- 2.3 As per Part-IV of the Application filed by the Operational Creditor, initially the total debt in default pertaining to financial years 2008-09 and 2014-15 was shown at Rs.9,82,972/- (Nine Lakhs Eighty-Two Thousand Nine Hundred Seventy-Two Rupees) including interest at the rate of 18% P.A. The said amount represented Sales Tax/ VAT payable to the Sales Tax Authorities in respect of the above transactions for which the Operational Creditor had received continuous Demand Notices from the Sales Tax Authorities.
- 2.4 The Corporate Debtor was required to deposit the Sales Tax/ VAT with the Sales Tax Authorities in respect of the transactions carried out in the financial years 2008-09 and 2014-15. Since the Sales Tax/ VAT was not deposited with the Sales Tax Authorities, the Operational Creditor had received Demand Notices dated 13.08.2017 from the Central Sales Tax and Maharashtra VAT Authorities about the arrears of tax for financial year 2014-15.
- 2.5 The Corporate Debtor *vide* letter dated 10.02.2017 pointed out that it had approached the Sales Tax Department for clearing the dues of the financial year 2014-15 in installments. As regards financial year 2008-09, the Corporate Debtor informed that it was “ready to make the payment of Rs.2,03,609/-” to the Operational Creditor on installment basis for which it required some time.



- 2.6 In view of the above events, the Operational Creditor issued Demand Notice under Section 8 of the Code on 26.06.2017 to the Corporate Debtor. However, the Corporate Debtor neither responded to the notice nor made any payment to the Operational Creditor.
- 2.7 The Operational Creditor also submits that it has furnished the Affidavit dated 31.01.2018 under Section 9(3)(b) of the Code about the fact that the Operational Creditor had not received any notice or letter regarding any dispute of unpaid operational debt.
- 2.8 It is observed from the record of proceedings that *vide* order dated 01.03.2023, Counsel for the Operational Creditor was asked to seek instructions from his client as to whether the present Application should be proceeded with or the Operational Creditor would withdraw the same, keeping in view the meagre amount of default involved in the financial year 2008-09 since the Corporate Debtor had already made payment of Rs.3,72,758/- to the Sales Tax Authorities towards the VAT liability pertaining to financial year 2014-15.
- 2.9 Thereafter, an Affidavit was filed by the Operational Creditor on 13.04.2023 for a fresh and enhanced claim of total amount of Rs.8,16,703/- (Rupees Eight Lakhs Sixteen Thousand Seven Hundred Three Only) for the financial year 2008-09 including interest and legal charges. The amount of Rs.8,16,703/- comprises Rs.2,03,609/- outstanding towards VAT liability related to transactions during the financial year 2008-2009, interest of Rs.5,13,094/- calculated at the rate of 18% per annum up to 31.03.2023 and legal charges of Rs.1,00,000/-.



2.10 Finally, it is submitted that the entries of unpaid debt of Rs.7,16,703/- including interest of Rs.5,13,094/- for the period from 2008-09 to 31.03.2023 have been recorded in the books of account of the Operational Creditor every year and hence, the amount due from the Corporate Debtor cannot be waived.

**3. Contentions of the Corporate Debtor:**

3.1 The Corporate Debtor in its Affidavit-in-Reply filed on 05.02.2020 has strongly refuted all allegations levelled by the Operational Creditor. It is vehemently argued that the present Application deserves to be dismissed at the very threshold and is not maintainable on several grounds.

3.2 In the first place, it is contended that the Applicant cannot be categorised as an "Operational Creditor" under Section 5(20) of the Code as the amounts which are sought to be claimed are towards payment of dues to the Sales Tax Authorities.

3.3 Secondly, it is submitted that the amounts payable to the Operational Creditor under the invoices for the transactions during the financial years 2008-09 and 2014-15 have already been settled, leaving no outstanding amounts payable to the Operational Creditor.

3.4 Thirdly, the Corporate Debtor submits that there exists no 'operational debt' due to the Operational Creditor presently, since the amounts payable are towards VAT liability which are to be paid to the Sales Tax Authorities. The Corporate Debtor also challenges the Operational



Creditor's arbitrary demand of interest, deeming it to be unjustified and unsustainable.

- 3.5 Fourthly, it is not the case of the Operational Creditor that the VAT amounts for the concerned period had been paid by the Operational Creditor as evidently, no receipts towards payment of the VAT amount have been attached to the petition.
- 3.6 Fifthly, even assuming for the sake of argument that the aforesaid amounts are due and payable to the Operational Creditor, it is contended that the aforesaid claims are hopelessly time-barred as the Operational Creditor is seeking payment of dues arising from transactions pertaining to the financial years 2008-09 and 2014-15.
- 3.7 And finally, the Corporate Debtor submits that it has already discharged VAT liability of Rs.3,72,758/- to the Sales Tax Authorities arising from transactions with the Operational Creditor during the financial year 2014-15. It is stated that the Corporate Debtor has already communicated this fact to the Operational Creditor *vide* its e-mail dated 28.08.2019. Further, regarding the payment of VAT liability related to transactions for the financial year 2008-09, the Corporate Debtor submits that it has already approached the Sales Tax Authorities in this regard and the requisite payment will be made in accordance with their directions.



**4. Analysis and Findings:**

Upon due consideration of the pleadings along with the materials available on record and hearing both the Counsel for the Operational Creditor and the Corporate Debtor, our findings in the matter are as under:-

4.1 It is a matter of record that the purported amount of unpaid operational debt initially claimed by the Operational Creditor pertained to outstanding VAT liability in respect of certain transactions of supply of goods carried out between the Operational Creditor and the Corporate Debtor in the financial years 2008-09 and 2014-15. Copies of the relevant invoices have, however, not been placed on record by the Operational Creditor. A perusal of the Ledger Account of the Corporate Debtor shows that it had made full payment of Rs.33,54,823/- towards the purchase invoices raised by the Operational Creditor from time to time during the financial year 2014-15. It is also noted from the record that the Corporate Debtor has already discharged the VAT liability of Rs.3,72,758/- pertaining to the financial year 2014-15 to the satisfaction of the Sales Tax Authorities. In these circumstances, the only limited issue for determination is whether the VAT liability of Rs.2,03,609/- payable by the Corporate Debtor to the Sales Tax Authorities for the financial year 2008-09 partakes the character of an 'operational debt' owed by the Corporate Debtor to the Operational Creditor in default of which the present Application deserves to succeed.

4.2 It is well-settled that an Application under Section 9 of the Code, *inter alia*, requires strict proof of debt and default. The Applicant must prove



with credible evidence and materials that there is an 'operational debt' owed to him by the Corporate Debtor and that there has been a default in payment of such debt on the date on which it fell due and payable. On perusal of the materials available on record, it is noted that the Applicant had purchased some equipment from the Corporate Debtor during the financial year 2008-09 and paid the entire amount of Rs.18,32,484/- due towards cost of the equipment including sales tax at the rate of 12.5%. In other words, there was no amount due and payable to the Applicant from the Corporate Debtor in respect of the above transaction in the financial year 2008-09.

4.3 In light of aforesaid facts, it is evident that no amount of 'operational debt' in terms of Section 5(21) of the Code could be said to be due and payable by the Corporate Debtor to the Applicant in the financial year 2008-09. Similarly, a mere bald claim that entries of unpaid debt and interest have been recorded in the books of account of the Applicant will be of no help to the Applicant, because mere unilateral entries in one's books of account unsupported by any legal justification will not qualify as 'operational debt' within the meaning of Section 5 (21) of the Code.

4.4 Further, merely because the Corporate Debtor did not pay sales tax collected from the Applicant to the Sales Tax Authorities in 2008-09, such amount will by no means qualify as 'operational debt' owed to the Applicant because this amount is actually owed by the Corporate Debtor to the Sales Tax Authorities and does not represent the price or consideration for supply of equipment to the Applicant. This might be



considered an act of unjust enrichment on part of the Corporate Debtor at the cost of the Applicant for which the remedy lies elsewhere but certainly not under Section 9 of the Code. It is well-established that statutory dues like income tax, VAT etc. fall within the meaning of 'operational debt' under Section 5(21) of the Code only when these are payable to the relevant statutory authority (rather than a private party) which qualifies as "Operational Creditor" under the Code.

4.5 Thus, it emerges that the Applicant has failed to discharge the onus of proving the existence of an 'operational debt' due and arising under the law by the Corporate Debtor within the meaning of Section 5(21) of the Code. No concrete evidence has been placed on record in order to demonstrate its status as an "Operational Creditor" within the meaning of Section 5(20) of the Code vis-a-vis the Corporate Debtor regarding the alleged outstanding debt claimed in the matter. The present Application is thus liable to be dismissed on this ground alone. In view of this finding, the Applicant's whimsical and fanciful claims for unilateral and arbitrary interest and legal charges in the financial year 2008-09 also fail as these have no legs to stand.

4.6 As regards the proof of 'default' of alleged 'operational debt', it is noticed from the record that the Applicant has no uniform or consistent stand with regard to the specific date on which the alleged default occurred on part of the Corporate Debtor. For example, in column (2) of Part-IV of the Application, it claims the amount to be in default "From the date 10<sup>th</sup> February, 2017 since the Operational Debtor has admitted their liability



till date not Payment (sic)". However, while furnishing its fresh claim for financial year 2008-09 *vide* Affidavit filed on 13.04.2023, it has calculated interest of Rs.5,13,095/- (rounded off) @ 18% per annum "from the year 2008-09 till the day 31<sup>st</sup> March, 2023" on the alleged debt amount of Rs.2,03,609/-.

4.7 There can be no quarrel with the legal proposition that the date of default is a crucial and relevant element for determining the maintainability of the present Application. As stated above, the Applicant is claiming alleged unpaid operational dues of Rs.2,03,609/- pertaining to the financial year 2008-2009 when the Corporate Debtor failed to deposit the said amount of sales tax/ VAT with the Sales Tax Authorities. However, the present Application was filed on 30.08.2018 which is far beyond the statutory period of 3 years available under Article 137 of the Limitation Act, 1963. Similarly, the Applicant's reliance on the letter of the Corporate Debtor dated 10.02.2017 expressing readiness to make payment of Rs.2,03,609/- to the Applicant on instalment basis will be of no avail, because the said letter can neither be treated as an acknowledgment of liability nor will it serve to extend the limitation period under Section 18 of the Limitation Act, 1963 because such an admission was not made before the expiry of the period of limitation. Consequently, we find that the present Application is not at all maintainable for the purpose of adjudication in terms of Section 238A of the Code read with Article 137 of the Limitation Act, 1963.



4.8 We, therefore, find merit in the primary contention put forth by the Corporate Debtor that the amount claimed to be in default in the instant case representing outstanding VAT liability of the financial year 2008-09 owed by the Corporate Debtor to the Sales Tax Authorities can by no stretch of imagination be treated as an 'operational debt' owed to the Applicant within the meaning of Section 5(21) of the Code. Hence, it is found that the present Application under Section 9 filed by the Applicant fails. Since the Applicant has not been able to prove the existence of the operational debt as well as default thereof within the period of limitation, we are of the considered view that the present Application preferred under Section 9 of the Code to initiate CIRP in the matter of the Corporate Debtor deserves to be dismissed.

**ORDER**

In view of aforesaid findings, the present Application bearing C.P.(IB) No.3502/MB/2018 filed by Transtec Overseas Private Limited, the Applicant under Section 9 of the Code on 30.08.2018 for initiating CIRP in case of Dheeraj Aviation Ground Equipments Private Limited, the alleged Corporate Debtor is **rejected**.

The Registry is hereby directed to communicate this order to both the parties immediately.

**Sd/-**  
**SANJIV DUTT**  
**MEMBER (TECHNICAL)**  
//deepa//

**Sd/-**  
**K. R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**