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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 09.04.2021

**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), **Shri Rajeswara Rao Vittalala**  
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. 178/BB/2020	For orders	Sec 9 of I&B code 2016	Winlead(HK) Cable & Wire Products Co. Ltd	Nityananda n	M/s Velankani Electronics Pvt Ltd	Ajay Kumar M

ADVOCATE FOR PETITIONER/s:

Nityananda 9535833034  


ADVOCATE FOR RESPONDENT/s:

Sr: Arun Kumar- Sr. Counsel

Ajay Kumar  
Ajay Kumar 9955103869

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

**C.P. (IB)/178(BEN)2020**  
**Court No. 1**  
**Item No. 117**

**IBC Under Sec 9**

**IN THE MATTER OF:**

M/S WINLEAD HK CABLE AND WIRE  
PRODUCTS LIMITED

.....Petitioner

V/s

M/S VELANKANI ELECTRONICS PRIVATE  
LIMITED

.....Respondent

**Order delivered on...09/04/2021**

**Coram:**

**SHRI RAJESWARA RAO VITTANALA, HON'BLE MEMBER (J)**  
**SHRI ASHUTOSH CHANDRA, HON'BLE MEMBER (T)**

**For Petitioner(s):**

SHRI NITYANANDAN

**For Respondent(s):**

SHRI ARUN KUMAR, SR. COUNSEL A/W. SHRI AJAY KUMAR.M.

**ORDER**

Heard Shri Nityanandan, learned Counsel for the Petitioner and Shri Arun Kumar, learned Sr. Counsel along with Shri Ajay Kumar.M, learned Counsel for the Respondent.

C.P.(IB)No.178/BB/2020 is dismissed by separate order.

**MEMBER (T)**

**MEMBER (J)**

SS

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

C.P. (IB)No.178/BB/2020  
U/s.9 of the IBC, 2016  
R/w Rule 6 of I&B (AAA) Rules, 2016

**Between:**

M/s. Winlead (HK) Cable &  
Wire Product Co. Ltd.  
*Rep. by its Authorised Person*  
*Mr. Priyavart Chaudhary*  
Room No.5/3 F, Shun On  
Commercial Building  
No.112-114, Des Voad,  
Central Hong Kong

**And At:**

1004 Sector 9, Vasundhara,  
Ghaziabad – 201 301 - Petitioner/Operational Creditor

**And**

M/s. Velankani Electronics Pvt. Ltd.  
Rep. by its Chairman/Managing Director  
Block VIII, 1<sup>st</sup> Floor, Electronic City  
Phase I, SY.No.43, Hosur Road,  
Bengaluru – 560 100 - Respondent/Corporate Debtor

**Date of Order: 9<sup>th</sup> April, 2021**

**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 Nithyananda S.G.  
For the Respondent : Shri Arun Kumar, Senior Counsel a/w.  
Shri Ajay Kumar.M



**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.178/BB/2020 is filed by M/s. Winlead (HK) Cable & Wire Product Co. Ltd. (Petitioner/Operational Creditor), U/s.9 of the IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016, by *inter alia* seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Velankanni Electronics Pvt. Ltd. (Respondent/Corporate Debtor) on the ground that it has committed default for an amount of Rs.35,78,256/- (Rupees Thirty Five Lakhs Seventy Eight Thousand Two Hundred and Fifty Six only).
2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:
  - (1) M/s. Winlead (HK) Cable & Wire Product Co. Ltd. (hereinafter referred as Petitioner/Operational Creditor), is a Limited Company registered under the law of Hong Kong and also having its India Office registered under the Indian Companies Act, 1956. It is engaged in the business of manufacturing and distributing high quality cables viz., HDMI, USB, BNC and Scart, as well as Audio & Video cables etc.
  - (2) M/s. Velankanni Electronics Pvt. Ltd. (hereinafter referred to as Respondent/Corporate Debtor) is a Private Limited Company, was incorporated on 26.06.2015, under the Companies Act 2013, bearing CIN: U32102KA2015PTC081173. Its Authorised Share Capital is Rs.40,10,00,000/- (Rupees Forty Crores Ten Lakhs only) and Paid-up Capital is Rs.1,00,000/- (Rupees One Lakhs only). It is involved in the manufacture of electronic valves and tubes and other electronic components.
  - (3) The Operational Creditor business is basis on Cash & Carry. The Corporate Debtor was doing long term business with the



Operational Creditor and slowly gained trust and started to do credit business with the Operational Creditor. In such a scenario, the Corporate Debtor raised a request for supply of High quality RCA Cables, DC Cables, HDMI Cables etc., and acceding to the request and long standing relationship, the materials were shipped FOB to the Corporate Debtor. Upon receipt of the material with satisfaction, Invoice was also raised against the deliveries which are as follows:

Sl. No.	Date of Invoice	Invoice No.	Amount (USD)	Amount (Rs.@71/-)
1	11.05.2018	EA520-180511	7134	5,08,511.52
2	17.05.2018	EA520-180517	3550	2,53,044.00
3	18.05.2018	EA520-180518	10250	7,30,620.00
4	14.06.2018	EA520-180614	15416	10,98,5852.48
5	14.06.2018	EA520-180614/2	7100	5,06,088.00
6	14.06.2018	EA520-180614/3	6750	4,81,140.00
<b>Total</b>			50200	35,78,256.00

- (4) After every successful delivery (completion of service), the Operational Creditor would raise an invoice containing all necessary particulars as agreed between the parties. In spite of several reminders to the Corporate Debtor, the above invoices remain unpaid and the same is confirmed by a letter of Confirmation dated 31.05.2019 issued to Operational Creditor and confirmed to their statutory Auditors. Despite agreeing to clear the outstanding dues of the Operational Creditor, the Corporate Debtor since May 2018, have failed to clear the unpaid operational debt amount to Rs.35,78,256/-. Finally, the Operational Creditor was constrained to issue Demand Notice dated 31.08.2019 to the Corporate Debtor, calling upon it to clear the outstanding unpaid operational debt as contemplated under the Code.
- (5) The Corporate Debtor has not replied to the said Demand Notice dated 31.08.2019, till date and thus the same gives rise to cause



of action in favor of the Operational Creditor in terms of Section 9(1) of the IBC, 2016 to file the present Petition.

3. The Respondent has filed its Statement of objections dated 18.09.2020, by inter alia contending as follows:

- (1) The instant Petition is an abuse of the process of Law initiated to coerce the Respondent to settle the dispute pending between the parties and to recover money from the Respondent.
- (2) The Petitioner is a Company situated in Hongkong, China and is engaged in the business of manufacturing cables in China, which are used for set-top boxes and exports the same to several Countries. The Respondent is a Private Limited Company based in Bengaluru, and one of its businesses is to manufacture and supply set-top boxes for Doordarshan. It is for one such contract that the Respondent needed huge quantities of audio-video cables, D.C.Cables and HDMI Cables. Since the Petitioner claimed to be the manufacturer of good quality cables, the Respondent decided to procure the same from the Petitioner Company. The Respondent as such issued purchase orders in the month of February, 2018 for procurement of huge quantities of audio video cables. The Petitioner in-turn supplied the required quantities of cables and generated invoices in the month of February and April 2018 for a total value of \$26,250, the same was promptly paid by the Respondent.
- (3) Looking into the quality of the products supplied by the Petitioner, the Respondent placed further orders for supply of AV and DC Cables which was also supplied and invoices generated for a sum of \$420/- and \$536/- that payment was also immediately paid by the Respondent. Thereafter, the Respondent placed several orders for large quantities of DC and AV cables in



the month of April, 2018. The Petitioner started supplying the same from the month of May, 2018, however much to the shock of the Respondent, it was noted that the products supplied by the Petitioner were of inferior quality and several of them were defective and many were found to be broken as well. The same was noted by the quality inspection wing and was taken up with the Petitioner. Initially, the Petitioner did not even accept the rejection and rather tried to blame the Respondent for the defective products saying that the products must have been wrongly handled by the Respondent at its end. It was noticed that out of 100, the defective/rejected material was nearly 15 for which the Petitioner raised further objections. However, after several rounds of communications, the Petitioner finally agreed that there was a mistake as its own end.

- (4) Despite the same, the Respondent had not stopped payment in favor of the Petitioner and cleared several payments pending re-conciliation of the Account. The Respondent in good faith placed further orders for supply of AV Cable, DC Cable and HDMI cable as well. However, on supply, it was noted that the Petitioner was still shipping sub-standard and defective products along with the products which are in good condition. The Respondent has raised the issue with the Petitioner several times and submitted reports of quality inspection conducted at its own end.
- (5) After having pointed out to the Petitioner that the Respondent at its end had to incur heavy expenditure towards inspection of the products supplied by the Petitioner, which were in huge quantities (nearly 3 lakhs cables) which resulted in huge loss of time, effort and also missing out deadlines for finishing the manufacturing and supply of set-top boxes. As such, the



Petitioner had even candidly agreed for deducting the value of rejections from the outstanding payments. The Respondent was awaiting modified invoices and/or debit notes from the Petitioner to reconcile the Accounts at its end. However, the Petitioner did not take up the matter and stopped communications with the Respondent. The Petitioner did not even complete the supply of 60,000 quantity of DC cables under P.O. dated 29.03.2019 and the short fall was 30,000 in number, again out of the quantities supplied, the Respondent had to reject several pieces for being defective. The Petitioner did not issue communications to reconcile this anomaly also.

- (6) The Respondent has in all made payment of \$55,107.80/- and not \$50,11.780/- as mentioned in the Petition. Though the Petitioner had agreed to reduce the total amount payable in emails, it never followed it up with official letter and paperwork signed by authorized officials. Even when the Respondent pointed out that for the purpose of accounting the balance payable to the Petitioner was still showing \$50,200/-, the Petitioner did not honour its word and did not issue communications for having reduced the total amount payable by taking into account the rejections and the costs incurred by the Respondent towards inspection of the products. This is exclusive of damages suffered by the Respondent due to short fall of supply of products. Even the Respondent is willing to settle the actual debt to the Petitioner. The Respondent is an ongoing concern having a turnover of about Rs.15 Crores for 2019-20 employing huge staff and working several contracts.
- (7) Neither under the purchase order nor under the alleged invoice raised by the Petitioner, there is no terms or conditions prescribing the due date for making payment. It is to be noted



that Respondent has made several payments under the purchase orders and it is only with regard to the alleged balance payments that the Petitioner has filed the above Petition as such it would be incorrect to contend that there was default on part of the Respondent in making the balance payment.

- (8) The above narrated facts regarding the communications exchanged between Petitioner and the Respondent has not been mentioned by the Petitioner either in its demand notice or under the above Petition. The pre-existing dispute has been willfully suppressed by the Petitioner and has not approached this Adjudicating Authority with clean hands. The Demand Notice sent by the Petitioner dated 31.08.2019 was also without reference to facts and was incomplete and was a deliberate attempt to cover-up the dispute and to recover from the Respondent money which were not liable to be paid. The representatives of the Respondent were in touch with the Petitioner seeking for revised statement to reconcile the Accounts and were also assured by the Petitioner that no precipitative action would be initiated before settling the Accounts. Hence the Petitioner is attempting to cover-up its faults and is trying to coerce the Respondent to release payments without first settling the dispute in hand.
- (9) Subsequent to the said statement of objections, the Respondent has filed Memo dated 08.04.2021, by placing some more material facts, (which is taken on record), inter alia contending as follows:
- a) The Respondent before this Tribunal is in the business of manufacturing Electronic Products like Set Top Boxes, Servers, Network switches and related accessories. It also provides MSO (Multi System Operator) related services and is presently engaged in the above mentioned activities. The



Respondent employs about 182 persons directly or indirectly. The Respondent is a going concern and had a turnover of Rs.43.04 Crores for the FY 2018-19. The Respondent's turnover for the FY 2019-20 is about Rs.66.15 Crores. It has property, plant and equipment of more than 120 Crores as on 31.03.2020. The Respondent has set up and is running two factories in Electronics City Phase 1 and phase II in Bengaluru. It has registered office in Electronic City within 22 Acres the campus called Velankani Tech Park owned by 100% holding Company of the Respondent viz., Velankani Information Systems Limited.

- b) There was a genuine pre-existing dispute between Respondent and the Petitioner herein and payment was kept pending in view of the said dispute. Further, in view of the onset of COVID-19 pandemic, due to lockdown and other related restriction, all Sectors of business were affected. The Respondent's business of manufacturing Electronic Products also suffered due to severe global economic crisis brought in by the pandemic. However, now things are looking up and Respondent is making progress. Hence, without prejudice to the rights of the Respondent, a settlement proposal was given to the Petitioner under email communication dated 27.03.2021 where under the Respondent proposed to pay the entire sums of \$50,200/- as demanded by the Petitioner in two tranches, sum of \$20,000/- by end of May 2021 and the entire balance by the end of July 2021, which is a very reasonable proposal. The Petitioner has refused to accept the proposal for settlement quoting vague reasons. However, the Respondent is even today willing to settle the dispute in hand as proposed to the



Petitioner. The Respondent affirms that it will stand by the proposal and honour the same.

- c) Therefore, the Petition may be disposed off without prejudice to the rights of the Petitioner in the interest of justice and equity.
4. Heard Shri Nithyananda S.G, learned Counsel for the Petitioner, and Shri Arun Kumar, learned Senior Counsel for the Respondent. We have carefully perused the pleadings of the Parties, extant provisions of the Code, the Rules made thereunder and the Law on the issue.
  5. The case was listed for admission on various dates viz., 19.06.2020, 03.07.2020, 27.07.2020, 24.08.2020, 21.09.2020, 08.02.2021, 01.03.2021, 15.03.2021, 22.03.2021, 31.03.2021 and on 09.04.2021. It was adjourned on these dates at the requests of the Parties, on one ground or the other, including exploring the possibility of settling the issue in question.
  6. Shri Arun Kumar, learned Senior Counsel for the Respondent, while opposing initiation of instant proceedings, has further submitted that they are still trying to resolve the claim of the Petitioner and also offered to settlement proposal to the Petitioner but it is adamant to accept it. And the Respondent being solvent Company cannot be put to distress position by virtue of these proceedings, which is nothing but abusing process of Code filed only with an intention to recover the outstanding amount, which is against the object of Code.
  7. As stated supra, both the Parties are in cordial relationship in running their business affairs for considerable period of time. However, disputes crop up with respect to some of invoice due to defective service as pointed out by the Learned Counsel for the



Respondent. Even then the Respondent, in fairness expressed its willingness to settle the claim by way of settlement proposal. We are convinced that the instant Petition is filed solely for recovery of outstanding amount, which is against the object of Code. And the Adjudicating Authority cannot be turned into recovery forum, and that too when the Respondent is solvent Company employing substantial workforce. And Adjudicating Authority cannot disturb solvent Company, when it is readily accept the liability to pay in installments. The attitude of the Petitioner in not accepting settlement proposal made by the Respondent and insisting to initiate CIRP against it is not only untenable but against the object of Code. And this attitude further strengthened that the Petitioner is interested to de-establish the solvent Company rather than to recover even outstanding amount. The Petitioner having failed to show even prima facie evidence to establish insolvency of Respondent Company, it has to go to Civil Court for recovery of such outstanding amount. Adjudicating Authority cannot usurp the jurisdiction of other Courts/Tribunal. The Hon'ble Supreme Court in recent judgment in the case of *Gujarat Unga Vikas Nigam Ltd Vs. Amit Gupta and others* (2021 SCC Online, SC 194, has inter alia clarified about general jurisdiction of NCLT/NCLAT, under Section 60(5)(c) of IBC in the following terms:

*“67. The institutional framework under the IBC contemplated establishment of a single forum to deal with the matters of insolvency, which were distributed earlier across multiple fora.... Therefore, considering the text of section 60 (5) (C) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate dispute, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing so, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of*



*other Courts, Tribunals and fora, when the dispute is one which does not arise solely from or relate the insolvency of Corporate Debtor. The nexus with the insolvency of the Debtor must exist.”*

8. The Adjudicating Authority cannot initiate CIRP against solvent Company that too in present pandemic situation prevailing in the Country adversely affecting its economy.
9. For the aforesaid reasons and circumstances of the case and the law on the issue, we are of the considered opinion that the instant Petition is filed solely with an intention to recover the outstanding amount treating Adjudicating Authority as recovery forum, which is against the object of Code. Therefore, the Petition is liable to be dismissed.
10. In the result, C.P.(IB)No.178/BB/2020 is hereby dismissed. And this order will not come in the way of Petitioner to invoke other remedies available to it under any other law. However, it is advised to the Respondent to settle the claim of, as proposed, as expeditiously as possible, without forcing the Petitioner to invoke alternative remedy. No order as to costs.

**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**