

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 1810/IBC/MB/2018**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016.

*In the matter of*

**Lampex Electronics Limited**

(CIN: U29309TG191PLC012506)

6-2-231/B, Kukatpally, Hyderabad-  
500072

.....**Operational Creditor**  
**Vs**

**AMI Tech (India) Private Limited**

(CIN: U27100MH1995PTC140949)

6, Feitham House, 2<sup>nd</sup> Floor, 10 J.N.  
Heredia Marg, Ballard Estate, Mumbai  
(MH)-400001.

.....Corporate Debtor

**Order delivered on: 04.12.2020**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

For the Applicant: Ms. Saumya Brajmohan, Advocate

For the Respondent: Ms. Samrudhi Chothai, Advocate

***Per: Shri H.V. Subba Rao, Member (Judicial)***

**ORDER**

1. This Company petition is filed by Mr. Mygapula Kameshwara Rao, Authorized Representative of Lampex Electronics Limited (hereinafter called "Operational Creditor") seeking to initiate corporate Insolvency Resolution Process (CIRP) against AMI Tech (India) Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate debtor committed default in making payment to the petitioner in view of the goods provided by the petitioner to the Corporate Debtor by invoking the provisions of Section 8 and 9 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Corporate Debtor is a private limited company and incorporated on 05.12.1995 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U27100MH1995PTC140949. Its registered office at Flat 6, Feitham House, 2<sup>nd</sup> Floor, 10 J.N. Heredia Marg, Ballard Estate, Mumbai (MH)-40001. Therefore, this bench has jurisdiction to deal with this petition.
3. The present petition was filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 2,23,29,138/- (Rupees Two Crores Twenty-Three Lakhs Twenty Nine Thousand One Hundred Thirty Eight only) as outstanding amount, Rs. 1,15,43,505/- (Rupees One Crore Fifteen Lakhs Forty Three Thousands Five Hundred Five only) as Principal amount and Rs. 1,07,85,633/- (Rupees One crore Seven Lakhs Eighty Five Thousands Six Hundred Thirty Three only) as interest thereon at the rate of 24% per annum from 01.04.2018 till payment or realization and costs. [**page 3, Part IV- Particulars of Operation Debt**].
4. The case of the Operational Creditor is as follows:-
  - (a) Since 2011, under a business arrangement, the Corporate Debtor has placed various purchase order on the petitioner for supplying the Automatic Meter Reading (“AMR”) EQUIPMENT UNITS TO THE Corporate Debtor. Accordingly, for supplying the said AMR units under the various purchase orders, the Petitioner has maintained a separate ledger account for the entire business transaction between the applicant and the Corporate Debtor, wherein a record has been maintained for the ad-hoc payments made by the Corporate Debtor towards the total outstanding dues. The Corporate Debtor never made payments against a specific invoice. Therefore, whenever a payment was received from the Corporate Debtor toward pay-payment of the total outstanding dues under the invoices, the same was first adjusted against the outstanding invoice.
  - (b) After adjusting all the part -payments made by the Corporate Debtor, as per the ledger statement and records of the Applicant, a total of eight tax invoice-cum-delivery challans (**Exhibit D1-D8 to the application at pp: 14-21**) remains pending and outstanding against the Corporate Debtor under the Purchase

Order dated 18.02.2018 challans (**Exhibit B to the Application at page 12**) till date. The said invoices further reflect that if payments are delayed an interest of 24% per annum would be incurred by the Corporate Debtor.

- (c) On 21.04.2014 the applicant received a sum of Rs. 75, 00, 000/- (Rupees Seventy-Five Lakhs Only) towards part payment of the Corporate Debtor's legally enforceable debt under the letter of Credit dated 14.04.2014 (**Exhibit E to the Application at pp: 22-31**) issued by the Corporate Debtor. Accordingly, as per the books of account/ledger statement maintained by the applicant, as on 12.05.2014, there was an outstanding amount of Rs. 1, 43,56,798/- (Rupees One Crore Forty-Three Lakhs Fifty-Six Thousand Seven Hundred Ninety-Eight Only) which the Corporate Debtor was liable to pay to the Applicant.
- (d) By the Applicant's letter dated 11.08.2014 (**Exhibit F to the Application at pp: 32-33**), the corporate debtor was called upon to make the said payment to the Applicant. However, the Corporate Debtor failed to carry out its obligations and did not even bother to respond to the Applicant's letter. Thereafter a remainder notice dated 27.08.2014 (**Exhibit G to the Application at page 34**) was sent to the Corporate Debtor to make the said outstanding payment.
- (e) The Corporate Debtor by its letter dated 28.08.2014 (**Exhibit H to the Application at page 35**) accepted to make the payments towards the outstanding dues. However, the Corporate Debtor indicated two concerns pertaining to the warranty support and discount towards some 3500 power supply pieces from the applicant. It is pertinent to note that even by the said letter the Corporate Debtor has admitted that amounts were due and outstanding to be paid by the Corporate Debtor and the Corporate Debtor had admitted its liability to clear the outstanding dues of the Applicant.
- (f) The Applicant by its letter dated 08.09.2014 in response to the aforesaid letter (**Exhibit I to the Application at pp: 36-37**) responded to the two concerns raised by the Corporate Debtor and clarified that the terms of the Agreement dated 14.12.2010 (Clause 4 read with Clause 8, 12, 13 and 14) and the Purchase Order dated 18.02.2013 explicitly stated that the warranty would

be provided only for manufacturing defects arising out of the manufacture and not for any other purpose. That as per the standard quotations, in the case of any concerns including failure of power supply, other than the manufacturing defects, was to be dealt by the Corporate Debtor with the appropriate vendors, who were appointed by the Corporate Debtor and not by the Applicant. The Applicant submits that the terms of the Agreement were within the knowledge of the Corporate Debtor and it appears that such belated issues were being alleged to wriggle out of the obligations to pay the full outstanding dues to the Applicant. For the second concern, for smooth functioning of its business, the Applicant agreed to provide a discount of Rs. 7,35,000/- (Rupees Seven Lakhs Thirty Five Thousand Only) for the 3500 power supply pieces @ INR 200/ -ea plus 5% vat per unit, form the total outstanding sum of Rs. 1,43,56,798/- Accordingly, the Applicant called upon the Corporate Debtor to pay the balance sum of Rs. 1,36,21,798/- along with delayed interest which became due and payable by the Corporate Debtor as on 08.09.2014, failing which the Applicant would initiate appropriate proceedings.

5. The Respondent/Corporate Debtor filed detailed Affidavit in Reply along with xerox copies of the documents relied by them in support of their contentions. The brief facts of the Reply filed by the Respondent are as follows:-

- (a) On December 14<sup>th</sup>, 2010 the Applicant and the Respondent have entered into an agreement in terms of which the Operational Creditor agreed to supplies AMRs to the Respondents.
- (b) Pursuant to the said agreement, the Respondent raised purchase orders on the Applicant for the supply of 2,48,968 AMRs. Thus, the terms of the said Agreement formed an integral part of the purchase orders, which were duly accepted by the Applicant. Pertinently, the purchased orders stipulated that warranty would be provided by the Applicant for 5.5. years from the date of delivery. In this regard it may be noted that the Applicant has failed and / or neglected to disclose copies of all the purchase orders raised by the Respondent in breach of its obligations under the purchase orders, copies of which have now been

suppressed with a view to mislead this Hon'ble Tribunal. The Respondent craves leave to refer to an/or rely upon the copies of the purchase orders as and when necessary.

- (c) In April 2014, by a letter of Credit (Exhibit E to the Petition), the Respondent made a payment of Rs. 75,00,000/- to the Applicant towards the supply of AMRs.
- (d) In an around 2013, various issues arose between the applicant and Respondent in respect of the AMRs manufactured and supplied by the Applicant to the Respondent.
- (e) To the utter shock and surprise of the Respondent, the Applicant addressed two letters dated August 11, 2014 and August 27, 2014, (Exhibit F and G to the petition) calling upon the Respondent to make payment of the alleged outstanding amount of Rs. 1,43,46,798/- along with interest thereon, and informed the Respondent that failure to pay would result in the initiation of legal proceedings for recoveries of such amount (**“said letters”**).

6. In response to the said letters, the Respondent, by letter dated August 28, 2014 (Exhibit H to the Petition) brought to the attention of the Applicant, issues being faced by the Respondent, namely, failure of the Applicant to;

- (a) Provide back to back warranty support to the Respondent, which failure was in breach of the terms and conditions contained in the quotations of the Applicant as also the purchase orders (and consequently the said Agreement); and
- (b) Return the 3,500 units of power supply taken by the Applicant, despite an assurance being given by the Applicant that the same would be returned within three weeks from having been taken.

The Respondent requested that the above issues be sorted out between the parties first.

7. In response to the Respondent's letter of august 28, 2014, the applicant, by notice dated September 8, 2014 (Exhibit I to the Petition), sought to resile from its obligati9on under the said Agreement and purchase orders, by stating, *albeit* falsely that:

- (a) The warranty to be provided by the Applicant extended only to any manufacturing defects, as the design belonged to the Respondent; and
- (b) The applicant was not responsible for the power supply failure as the vendors for the power supply were suggested by the Respondent.

Pertinently, by this letter, the Applicant acknowledged and admitted that 3,500 units of power supply had been taken by the Applicant, which had not been paid for; and therefore, indicated that a credit note for an amount of Rs. 7,35,000/- would be issued in favour of the Respondent upon the Respondent issuing a bill in respect of the same.

Accordingly, the applicant called upon the Respondent to make payment of Rs. 1,36,21,798/- along with interest within a week of receipt of this notice.

8. In response to the Applicant's notice dated September 8, 2014, the Respondent by its letter dated October 17, 2014 (Exhibit J to the Petition) stated as follows:

- (a) The Respondent had placed an order with the Applicant for 1,48,968 modems, however, the Applicant had supplied the Respondent with only 1,18,870 modems;
- (b) The respondent was experiencing major issues with the modems supplied by the Applicant on account of poor workmanship; and
- (c) Despite the Applicant having agreed to give the Respondent back to back warranty, the Applicant had failed to repair the defective units sent back by the Respondent.

The Respondent enlisted the major issues relating to the modems manufactured and supplied by the Applicant as under:

**i. Warranty**

The purchase orders placed by the Respondent and accepted by the Applicant clearly stated that the Applicant would provide the Respondent with 5.5 years warranty support. At the time to accepting the purchase orders, the Applicant was well aware that the design of the modems was the Respondent's. However, with a view to avoid providing warranty support to the Respondent, the Applicant was now

belatedly taking the stand that the warranty support did not apply to any design defects as the design belonged to the Respondent. Due to poor workmanship, the Respondent was having serious issues with the product and which was, in turn affecting the Respondent's reputation with its clients. The Respondent was constrained to get the products rectified by other, and pay warranty charges in respect of them, which was affecting the Respondent's cash flow. The Respondent therefore, requested the Applicant to either provide the Respondent with financial guarantee for the warranty services.

**ii. Power Supply Cards**

The Respondent was experiencing major issues with the power supply cards in the modems, which had been supplied by the applicant. The applicant had agreed to provide support in respect of these power supply cards, however, was now seeking to back out from its obligations and stating that the warranty does not apply for power supply failures, and by suggesting that the Respondent approach one vendor M/s Technotrack directly for any warranty issues related to the power supplies. The Respondent once again reiterated that under the purchase orders, the Applicant was responsible for providing warranty on the product as a whole. The Respondent further informed that Applicant that in view of the fact that the power supplies had been repaired by the Respondent at its own cost and new power supplies had also been purchased, the Respondent would be deducting the amount from the amounts outstanding by the Respondent.

9. The Respondent also contended that out of the AMR units manufactured and supplied by the Applicant, approximately 2,500 units were faulty. Despite the Respondent having sent back these faulty units to the Applicant for rectification on multiple occasions, the applicant failed to rectify the same, and the AMR units were sent back to the Respondent either unrepaired or with poor repairing. It is contended by the Respondent that approximately 4,000 communication cables supplied by the Applicant were rejected by the

Respondent's customers on account of their poor quality. Despite of several reminders and warnings, the Applicant had failed to deliver the shipments containing AMRs to the Respondent. Till August 2015 and even as of today, the amounts due and payable by the Respondents are still disputed.

10. In the light of the above pleadings, the following issues will fall for consideration:

- i. Whether the above company petition is within limitation?
- ii. Whether there is pre-existing dispute between the parties?

In order to decide the plea of limitation, it is important to mention para 3 of the written submissions filed on behalf of applicant basing on which the applicant contends that the above petition is within limitation:

III. CONTENSIONS OF THE CORPORATE DEBTOR AND SUBMISSIONS OF THE APPLICANT

The contention of the Corporate Debtor that the present Application is time barred

1. *The contention of the Corporate Debtor that the present company Petition is time barred and not within the limitation period is hopelessly ambitious and patently false. The first invoice became due and pending on 16<sup>th</sup> February 2014 and the Corporate Debtor acknowledged its liability to pay the outstanding dues on 25<sup>th</sup> August 2015.*
2. *Section 15 of the Limitation Act, 1963, states that before the expiration of the prescribed period for a suit or application in respect of a right, if an acknowledgment of liability in respect of such right has been made in writing and signed by the party against whom such right is the acknowledgment is so signed. Since the Corporate Debtor has admitted its liability to pay vide his email dated 25<sup>th</sup> August 2015, fresh limitation period would start from 25<sup>th</sup> August 2015. It is pertinent to note that the Application has been filed on 16<sup>th</sup> may 2018 i.e. within 3 years from the date of admission of the Corporate Debtor's liabilities. Hence, the application filed by the Applicant is within the limitation period.*

11. It is very clear from the above paragraphs that the basis on which the above company petition is filed is basing on the alleged

acknowledgment of liability by Corporate Debtor on 25 August, 2015. It is also very clear from the above para that claim of the applicant is basing on the invoices raised on the Corporate Debtor in 2014. The above company petition is filed on 17<sup>th</sup> May, 2018. Thus, it is the contention of the applicant that the above company petition being filed on 17<sup>th</sup> May, 2018 is well within 3 years from the date of acknowledgment of liability dated 25 August, 2015 and therefore, the above company petition is within limitation.

12. The above legal aspect is no longer *res-integra*. The Hon'ble Supreme Court recently in ***Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd and another and B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates*** clearly held that the starting point for computation of the period of limitation for triggering sections 7 and 9 of Insolvency and Bankruptcy Code, 2016 is the date of default. It is very clear even according to pleading and written submissions of the applicant that the default relates to the period 2014. Even otherwise let us examine the acknowledgment of liability dated 25 August, 2015 executed by the Corporate Debtor and relied by the Operational Creditor. The Corporate Debtor under the above referred alleged acknowledgement dated 25 August 2015, mentioned the outstanding amount as per their records is 1,07,79,667/- and claimed adjustment to an extent of Rs. 43,40,070/- and admitted only an amount of Rs. 64,39,597/- as total outstanding payment after adjustment. It is very clear from the above acknowledgement that the above acknowledgement of liability by Corporate Debtor is not an unequivocal admission for the entire outstanding amount claimed by the operational creditor and therefore it cannot be construed as an acknowledgement of liability in strict legal sense.

13. Therefore, it is very clear even from the above acknowledgment that the Corporate Debtor is disputing the total outstanding amount to the operational creditor and the above alleged acknowledgment dated 25 August, 2015 cannot be construed as an acknowledgement of admission of liability and the above document is not helpful for saving the period of limitation. Even otherwise as held by the Hon'ble Supreme Court in the above two referred judgments, the above company petition has to be filed within 3 years from the date of default committed by

Corporate Debtor and not from the date of acknowledgement as the nature of proceedings before NCLT is resolution of debt and not recovery.

14. The next issue is with regard to the pre-existing dispute. The petitioner has relied on certain correspondence that has taken place between the parties annexed to the company petition. Exhibit 'L' at page no. 55 is an email dated 26 August 2015 sent by the Operational Creditor to Corporate Debtor in which the Operational Creditor clarified certain disputes and queries raised by the Corporate Debtor with regard to warranty, shortage of cables and power supplies and also with regard to calculation of the outstanding amount. Subsequent to the above email the operational creditor also got issued a legal notice dated 25.11.2015 under Exhibit 'N' at page 64 of the petition through their advocate Mr. M.Shiv Kumar of Hyderabad calling upon the Corporate Debtor to pay the outstanding amount of 1,15,43,550 with subsequent interest for which the Corporate Debtor has sent a reply dated 02.12.2015 under Exhibit 'O' at page 68 pointing out certain deficiencies on the part of the operational creditor. Thereafter the Operational Creditor once again sent demand notice dated 30.11.2017 under Section 8 of IBC, 2016 under Exhibit 'Q' at page 71 demanding an amount of Rs. 2,10,49,925/- for which the Corporate Debtor got issued reply dated 08.12.2017 raising various contentions with regard the quality of service, delayed shipment, communication cables, power supplies card warranty besides limitation.

15. It is very clear from the above correspondence relied by the petitioner himself that there are certain disputes between operational creditor and the Corporate Debtor with regard to the quality of service, warranty etc. The Hon'ble Supreme Court in **Mobilox Innovation Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.** while defining the pre-existing dispute clearly held that there need not be a suit or arbitration proceedings pending while determining the pre-existence of disputes and it is suffice if the tribunal on examination of the evidence relied by the parties comes to the conclusion that the claim of the operational creditor requires some investigation. From the careful examination of the above correspondence and keeping in mind the principles laid down by the Hon'ble Supreme Court in the Innovative judgement, we have no hesitation in concluding that there is a pre-existing dispute between

parties that requires investigation with regard to the claim of Operational creditor.

16. In view of the above findings and observations, this tribunal has no hesitation in holding that the above company petition is liable for dismissal on both the above grounds i.e. limitation and pre-existing disputes. Accordingly, the above company petition is dismissed.

17. However, this order does not preclude the operational creditor from initiating necessary recovery proceedings against the corporate debtor if at all they can establish their claim before appropriate forum.

Sd/-

**SHYAM BABU GAUTAM**  
**MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**