

NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-V

(IB) 2050(ND)/2019

In the matter of:

Blue Star Limited  
Kasturi Buildings,  
Mohan Advani Chowk  
Jamshedji Tata Road  
Mumbai-400020

And having its regional office at  
6<sup>th</sup> Floor, Vatika Atrium,  
Golf Course Road, Sector-53,  
Gurugram, Haryana- 122002

.....Operational Creditor

V/s

AM Cool Engineers & Consultants Private Limited  
303, 3<sup>rd</sup> Floor, Neel Kanth Tower,  
S-524 School Block, Vikas Marg,  
Shakarpur, New Delhi-110092

.....Corporate Debtor

SECTION: U/S 9 of IBC, 2016

Order delivered on: 29.05.2020

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. K.K. VOHRA, MEMBER (TECHNICAL)



For the Petitioner: Mr. Yashwardhan, Ms. Kritika

For the Respondent: Mr. Akshay, Mr. Rajendra

**ORDER**

**Per Mr. Abni Ranjan Kumar Sinha (Member Judicial)**

1. The Applicant/Operational Creditor(hereinafter referred to as the O.C)) is filing the present application against the Respondent/Corporate Debtor(hereinafter referred to as the C. D) under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") read with Rule 6 of the IBC, 2016 to initiate corporate insolvency resolution process in respect of Corporate Debtor.
2. The facts of the case in short is that the applicant is a one of foremost organisations in India, specialising in engineering, manufacturing, contracting, servicing and maintenance of air-conditioning, heating, ventilation, refrigeration system and electrical works of all kinds for commercial, industrial and institutional buildings. The applicant is India's largest central air-conditioning company widely acknowledged as market leader in this field.
3. The Corporate Debtor purchased 8 units of cassette air conditioner model BS-SD36SAU from applicant vide purchase order dated 09.06.2018 and that the applicant supplied to the Corporate Debtor the products as per the specifications and terms of the purchase order to its complete satisfaction, which products were accepted and acknowledged by the Corporate Debtor.



4. That after supplying the products to the Corporate Debtor, the applicant raised the invoices/debit notes in the following manner.

(i) An invoice numbers 4351006335 dated 11.06.2018 for an amount of Rs. 6,21,571/-

(ii) A debit note numbered 4354500053 dated 29.06.2018 for an amount of Rs. 19,223/-

Thus, a total amount of Rs. 6,40,795/- was due to be paid by the Corporate Debtor to the applicant herein.

5. Corporate Debtor appeared and filed the reply and claimed that alleged debt claimed by the petitioner does not fall within the purview of the Operational Debt and the petitioner is not a Operational Creditor and petitioner has concealed the material facts. Further, no purchase as claimed by the petitioner had been placed by the respondent. Further, the said purchase order shows that delivery address is Section -127 Noida but the respondent has no office or connection of any sort with the said address. Further, one police complaint has been filed by the respondent against Mr. Manish Gupta who was director of the respondent company on 02.08.2018. Further, after receiving the said notice under Section 138 NI Act, respondent had duly replied to the petitioner that the alleged purchase order was never placed by the respondent. He further submitted that since there are pre-existing disputes therefore, in view of *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 1 SCC OnLine SC 353*, the present application is not maintainable.



6. We have heard the applicant as well the respondent and perused the averments made in the application.
7. Ld. Counsel for the applicant, in the course of arguments, submitted that on 09.06.2018, the Operational Creditor received a letter from AM Cool Engineers & Consultants Pvt. Ltd. and informed the Operational Creditor to supply the material in the address given below in the letter. Accordingly, the Operational Creditor has delivered the goods on that address and raised invoices referred at paras 35, 36 & 37 of the application. He further submitted that thereafter, he received a cheque of Rs. 6,40,795/- which he enclosed at page 39 of the application but same was returned for the reason "Exceeds Arrangement" that letter is enclosed at page 40 of the application. He further submitted that thereafter legal notice was issued under Section 138 of NI Act on 22.09.2019 for dishonour of the cheque issued by the Corporate Debtor and on 11.02.2019, demand notice was issued and reply to the demand notice was also sent by the Corporate Debtor which is at page 62 of the paper book, in which, no specific facts has been mentioned regarding the pre-existing dispute. Therefore, it cannot be taken into consideration.
8. In reply, Ld. Counsel for Corporate Debtor submitted that the letter which the Operational Creditor has referred and enclosed at page 26 of the application was written by one Mr. Manish Gupta claiming himself to be the director of the respondent company and against that person one police complaint was lodged by the respondent company on 2.08.2018, therefore, any correspondence made by said Mr.



Manish Gupta is not liable to be accepted and that cannot be valid supply order. He further submitted that cheque was also issued by that director, therefore, respondent company is not liable for any act done by Mr. Manish Gupta and so, any transactions made by Mr. Manish Gupta is not binding upon the respondent company. In support of their contention, he placed reliance upon the copy of the complaint enclosed at page 21 of the reply and this fact was brought to the knowledge of the petitioner in pursuance of the reply to the legal notice under Section 138 NI Act, Therefore, respondent company is not liable to pay amount, hence, there is no outstanding dues. He further submitted that in response to the Demand notice, the Corporate Debtor has raised pre-existing disputes, so, the same may be taken into consideration and the application filed on behalf of Operational Creditor is liable to be dismissed.

9. In light of the submissions made on behalf of parties when we have gone through the averments made in the application as well as reply filed on behalf of Corporate Debtor then we find that admittedly a cheque of Rs. 6,40,7958/- which is the principal amount claimed by the applicant was issued by the respondent company but as per the return memo, which is at page 40 of the same was dishonoured on the ground that "exceeds arrangement" and thereafter applicant has sent the legal notice under Section 138 of NI Act and again on 11.02.2019 applicant has sent the demand notice under Section 8(1) of the IBC which was duly delivered upon the respondent and the same was delivered on 12.02.2019 and reply to the demand notice was also sent



by the Corporate Debtor on 20.02.2019 and same has been corroborated by the applicant by enclosing the reply to the demand notice with the application at page 62 but the applicant has not raised that reply to the demand notice was not received by him within 10 days from the date of delivery of demand notice. Therefore, We are of the considered view that Corporate Debtor was duly sent the reply within the period prescribed under Section 8(2) of the IBC.

10. At this juncture, we would like to refer the arguments advanced by the Corporate Debtor that there is pre-existing disputed raised by the Corporate Debtor, therefore, we would like to consider the submissions made by the Corporate Debtor and we have gone through the reply filed by the Corporate Debtor and we find that at para 2.7 page 66 of the reply, it is specifically denied that the alleged dishonoured cheque no. 189551 dated 29.06.2018 was issued by the Corporate Debtor i.e. M/s A M Cool Engineers & Consultants Pvt. Ltd. in favour of your client i.e. M/s Blue Star Limited. Hence, the Return in Memo dated 28.08.2018 is of no relevance.

11. Therefore, at this juncture, we would like to refer the cheque issued by the Corporate Debtor, ~~and~~ which the applicant (Operational Creditor) enclosed at page 39 of the paper book and that cheque was issued on 29.06.2019 by one Mr. Manish Gupta.

12. At this juncture, we would like to refer the reply filed by the Corporate Debtor and when we have gone through the reply, we find that at page 21 of the reply, Corporate Debtor has enclosed the police complaint filed against Mr. Manish Gupta that was lodged on 02.08.2018 in that



complaint, it is mentioned that Manish Gupta, the director of the respondent company, has not come to the office since 27.07.2018. when we shall read this averment along with the date of issuance of cheque by the Corporate Debtor, which was dishonoured, when presented by the Operational Creditor before the bank then we find that as per the case of the Corporate Debtor, the said person is not coming to the office since 27.07.2018, whereas the said cheque was issued on 29.06.2018, on the basis of supply order issued by the Mr. Manish Gupta on 09.06.2018. when we shall read letter dated 09.06.2018 and cheque dated 29.06.2018 together then we find, both the things were done by one Mr. Manish Gupta, who issued the purchase order and cheque in the capacity of the director of the respondent company. At this juncture, we would like to mention this fact that as per the case of the respondent the said Manish Gupta was not coming to office from 27.07.2018 but prior to that he had been performing the duty of the director of the respondent company and in that capacity he issued the purchase order to the Operational Creditor vide letter dated 09.06.2018 and direct the Operational Creditor to supply the units on the address given below in the letter i.e. Sector 137 Noida and accordingly, the orders were supplied to that address to the address mentioned in the purchase order and invoice was also raised, which would be evident from the tax invoices at page 35 onwards of the paper book after the supply on 29.06.2018. A cheque of Rs. 6,40,795/- was also issued in favour of Operational Creditor but same was dishonoured, therefore, the contention of the



Corporate Debtor that the company is not responsible for the act done by Mr. Manish Gupta as director of the company, in our considered view that contention is not liable to be accepted because the acts were done prior to the police complaint lodged by the company, by which he informed the police that the Director had not been coming to the office since 27.07.2018.

13. At this juncture, we would like to refer to the submission of the respondent that there is no office of Corporate Debtor at Sector 127 Noida and no supply was made to the respondent company. As we have already stated in the aforementioned paragraph that the director of the company directed the Operational Creditor to supply the goods on that address vide letter dated 09.06.2018. Therefore, we are unable to accept the contention of the respondent that no goods were supplied.
14. For the reasons discussed above, we are of the considered view that the plea of Corporate Debtor that the delivery of goods on the basis of supply order issued by Manish Gupta and subsequently cheque issued by Mr. Manish Gupta is not binding upon the respondent company in our considered view is not liable to be accepted. Therefore, that cannot be treated as pre-existing disputes.
15. Now, coming to the fact that whether payment of outstanding amount was made by the respondent to Operational Creditor or not? As discussed in aforementioned paras that cheque was issued by the respondent but same was dishonoured and respondent was not produced any document to show that said amount has been paid to



Operational Creditor. Therefore, we are of the considered view that the due amount which the Operational Creditor claimed has not been paid as yet.

16. Therefore, for the reasons discussed above, when we shall consider the case of Operational Creditor, in view of Section 9(5)(1) of IBC, then We find the application is complete, there is no payment of unpaid operational debt, which is more than One Lakh, which is the minimum threshold U/S 4 of the Code to initiate Insolvency proceeding and no notice of pre existing dispute has been raised by Corporate Debtor, hence we inclined to admit this application. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing of by the corporate debt or any of its assets or any legal right or beneficial interest therein;*

*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the*

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*Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

Further:

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."*



17. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint, Mr. Brahm Datt Verma, an Insolvency Professional, registration no. IBBI/IPA-003/IP-N00056/2017-2018/10496 email- [bdverma.rp@gmail.com](mailto:bdverma.rp@gmail.com) duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.
18. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
19. Copies of the order be sent to both the parties as well as to the IRP.

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**K. K. VOHRA**  
**Member (T)**

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24.05.2019

**ABNI RANJAN KUMAR SINHA**  
**Member (J)**