

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-2660/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

Aasrea E-tronics,
Registered partnership firm,
Through its managing partner
Mr. Gurdit Singh Walia,
A1A/37A, Janakpuri,
New Delhi – 110058.

...Applicant

Versus

Atek Infovision Pvt. Ltd.
Registered office at:
101, Vishal Tower, District Centre,
Janakpuri, New Delhi – 110058.

...Respondent



Coram:

DR. P.S.N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: Mayank Mikhail Mukherjee, Advocate
Counsel for Respondent: Nitin Bhatia, Simran Kaur, Advocates



ORDER

Per Dr. V. K. Subburaj (Member Technical)

Date:20.02.2020

1. This is an application filed by the Applicant Asra E-tronics seeking to initiate corporate insolvency resolution process (“CIRP”) of the Respondent Atek Infovision Pvt. Ltd., under Section 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) for the alleged default on the part of the Respondent in clearing the debt of Rs. 29,24,194.52/- owed to the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

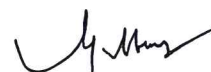
- i. The Respondent had a regular business association with the Applicant since 2017. During this period regular supply of power supply for CCTV cameras and related accessories were made to the Respondent by the Applicant. The goods were manufactured for the Respondent by the Applicant to be sold by the Respondent under its own brand name. This meant that the Applicant was merely a supplier of goods to the Respondent and would manufacture the same only on instructions from the Respondent. The said business relation was based on the fact that goods would be supplied to the Respondent against invoices



upon which the terms and conditions of the sale were mentioned.

There was no other written or oral agreement between the Respondent and the Applicant.

- ii. The Applicant supplied goods to the Respondent and issued 18 invoices from 29.12.2018 to 20.02.2019. The total dues arising out of these invoices was Rs.39,45,161. The Respondent also issued 8 invoices to the Applicant from 01.01.2019 to 27.02.2019 in relation to return of goods and raw material for a total value of Rs.6,07,910. The total outstanding liability as on 31.03.2019 in favor of the Applicant from the Respondent stood at Rs.38,37,251.
- iii. The Respondent paid a further amount of Rs.5,00,000/- towards the aforesaid liability towards goods to the Applicant on 17.04.2019.
- iv. The Respondent supplied to the Applicant via email, the ledger account of the Respondent which clearly highlights that the Respondent has a liability towards the Applicant of an amount of Rs.38,37,251 as on 31.03.2019.
- v. On 03.07.2019 the Respondent sent an email to an ex-partner of the Applicant to an invalid email address claiming that certain goods were being disposed of. There were no reminders sent or confirmation received about the same.



- vi. On 13.07.2019 an email was sent by the Respondent falsely and malafidely stating that certain articles had been returned in March 2019 to the Applicant, however, the same is not reflected in the ledger accounts of the Respondent. In fact the same could not have been done since the said premises on which the goods were allegedly returned had already been surrendered on 20.02.2019.
- vii. In furtherance of email dated 13.07.2019, the Respondent sent a false and fraudulent debit note of Rs.4,13,057. Without prejudice to the rights of the Applicant towards the false debit note to the amount of Rs.4,13,057 against which the Applicant shall take appropriate action, the Applicant taking into account the debit note and subsequent payments has arrived at the undisputed sum of Rs.29,24,194.52 for the purposes of this petition.
- viii. The Applicant sent a demand notice dated 07.09.2019 under Section 8 of the Code in Form 3 demanding the outstanding admitted liability of Rs.29,24,194.
- ix. On 18.09.2019 the respondent sent a reply to the demand notice denying all the claims without any proof or documentary evidence. The Respondent has not even claimed a prior dispute in the said reply. It is pertinent to note that the business



relationship between the parties was governed only by the invoices and there was no other written or oral agreement governing the same. the Respondent has not even denied its own ledger which clearly shows an outstanding in favor of the Applicant.

- x. The Respondent sent an additional reply dated 10.10.2019 raising the same claims as the previous notice. It is pertinent to note that no proof of an understanding of a guarantee for two years has ever been shown by the respondent, and merely an illusory plea has been raised to give the entire case a veneer of a dispute. The only documentary relationship on record is are the invoices generated by the Applicant.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions are made:

- i. The Applicant was all throughout an unregistered partnership firm during the course of its business dealings with the Respondent and got itself registered after surrendering its GST registration in April 2019 for the sole purpose of filing the present petition.
- ii. From the commencement of business relations, it was agreed and was also in practice that the Applicant was providing a two-

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year manufacturing guarantee on all the goods and materials supplied by it from time to time. The Applicant, however, has turned dishonest and has no intention of honoring the guarantee for the goods supplied by it.

- iii. Following the said practice, the Respondent used to return all the defective goods/supplies to the Applicant by issuing a sales invoice to the Applicant from time to time. The details of such sales invoices evidencing return of the goods from the Respondent to the Applicant is reflected in the statement of account filed by the Applicant filed with present application and relied upon by the Applicant.
- iv. The Respondent had never defaulted in payment of any amount due and payable by it and has paid the entire amount to the Applicant towards the supplies made by the Applicant to the Respondent from time to time and there is no amount due and payable by the Respondent to the Applicant. Statement showing details of goods returned by the Respondent to the Applicant during financial years 2017-18 and 2081-19 and copies of invoices issued by the Respondent to the Applicant towards return of defective goods/supplies returned under the guarantee period of two years have been filed by the Applicant along with the present petition.

- v. The Applicant had informed the Respondent in December 2018 that they are in the process of shifting their factory premises and therefore requested the respondent to keep the raw materials and other products for a value of Rs.9,96,192 including taxes in its premises. For this purpose, the Applicant has issued a sales invoice towards the said raw materials showing sale of said raw material to the Respondent.
- vi. The Respondent believing the representation made by the Applicant to be true agreed to keeping the aforementioned raw material in its warehouse and had taken the raw material from the Applicant in terms of its assurances that the said raw material/goods will be taken back by the Applicant. However, the Respondent later learnt that the Applicant had been planning to shut down its operations.
- vii. Till 31.08.2019 total stock valued at Rs.27,81,221 was lying with the Respondent as defective stock which is under the two-year guarantee period and is required to be returned to the Applicant as has been a part of past practice between the parties. Also, the Respondent had raised invoices from time to time on the Applicant towards supplied returned by it under the two year guarantee period, which is also reflected form the statement of

accounts filed by the Applicant along with the present application.

- viii. The Respondent, on the basis of the two-year guarantee that it used to get from the Applicant used to provide a guarantee of two years to its customers. The Respondent is therefore entitled to return the goods under the two-year guarantee provided by the Applicant as the Respondent has itself received back sold goods from the customers to whom it sells the said goods.
- ix. The Respondent is in fact entitled to recover an amount of Rs.8,53,218 from the Applicant towards recovery from the defective goods under guarantee amounting to Rs.27,81,221 and raw material amounting to Rs.9,96,192 which is also added up by the Applicant and shown as alleged outstanding.
- x. The Respondent vide email dated 13.07.2019 also requested the Applicant to repair the defective goods in terms of the discussion between the Applicant and the Respondent. The Applicant however failed and neglected to respond to the said email from the Respondent. Thus, there is a pre-existing dispute.



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3. We have heard the arguments and perused the documents filed by the parties. The Respondent is disputing the claim on the basis that the goods supplied were defective and the Applicant had extended a two-year warranty to the Respondent for the goods due to which the Applicant is obligated to take the goods back and refund the payments made by the Respondent. The Respondent has also claimed that goods worth Rs.9,96,192 is raw material which the Respondent had stored on request by the Applicant and was not an actual sale by the Applicant to the Respondent. The Respondent is specifically relying on emails dated 03.07.2019 and 13.07.2019 for proving that the dispute regarding defective goods had been raised by the respondent prior to issue of demand notice.

4. The Applicant has abstained from disputing the email dated 13.07.2019 and has filed its claim after deducting the amount Rs.4,13,057 reflected in the debit note sent via e-mail dated 13.07.2019. Regarding email dated 03.07.2019 the Applicant has claimed that the email has been sent to an invalid email address. The Applicant has also emphasized that the two-year warranty has never been extended to the Respondent by the Applicant and is not recorded in any invoice or document.

5. The Respondent in its email dated 03.07.2019 states that some goods are being disposed of according to the instructions of the Applicant and some goods returned to the Applicant are not repairable and are being discarded. The email does not mention the return of goods to the Applicant or refund of payment by the Applicant. It is more of an informative email than an email raising dispute. It is difficult to conclude from the tone and tenor of the email dated 03.07.2019 that there was a dispute between the parties. Apart from this email there is no other material to show that disputes existed between the parties.

6. A perusal of the invoices and the ledger accounts of the Applicant and the Respondent confirm that the Respondent has defaulted satisfying the claim of the Applicant. Thus, the present application is admitted and the CIRP of the Respondent is initiated.

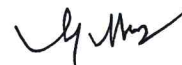
7. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:
 - “(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.

- (2) The supply of essential goods or services to the Respondent 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.”

8. From the list of interim resolution professionals (“IRP”) made available by IBBI, Mr. Ranjan Chakraborti (email id: ranjanns@gmail.com) is being confirmed by this Bench as the IRP in the present matter. He shall take such further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.
9. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

— Sd —

(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

— Sd —

(DR. P.S.N. PRASAD)
MEMBER (JUDICIAL)

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