

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB-2173/ND/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:
BLUE STAR LIMITED**

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

HEAVEN ENGINEERS & CONTRACTORS PRIVATE LIMITED

...RESPONDENT/ CORPORATE DEBTOR

JUDGMENT PRONOUNCED ON: 06.02.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (TECHNICAL)

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MEMO OF PARTIES

Blue Star Limited

Registered office:

Kasturi Buildings

Mohan Advani Chowk

Jamshedji Tata Road

Mumbai - 400020

...Applicant/Operational Creditor

Versus

Heaven Engineers & Contractors Private Limited

Registered office:

6th Floor, Vatika Atrium

Golf Course Road, Sector-53

Gurugram, Haryana-122002

...Respondent/ Corporate Debtor

FOR THE APPLICANT : MR.YASHVARDHAN, ADVOCATE

FOR THE RESPONDENT : MR. KANISHK RANA, ADVOCATES

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ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Blue Star Limited (for brevity 'Applicant') through Mr. Chetan Sharma, Manager (Legal) who has been authorized vide Board Resolution dated 13.09.2019 with a prayer to initiate the Corporate Insolvency process against Heaven Engineering & Contractors Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated under the provisions of Companies Act, 1956 on 08.10.2010, bearing CIN L28920MH1949PLC006870, and having its registered office at Kasturi Buildings Mohan, Advani Chowk ,Jamshedji Tata Road, Mumbai - 400020
3. The Corporate Debtor is private limited company incorporated on 01.10.2012 under the provisions of Companies Act, 2013 bearing CIN U70109DL2012PTC243041 and having its registered office at 128, Pocket-14, Sector 20, Rohini, New Delhi – 110041. The Authorized Share Capital of the company is 1,00,000/- and the paid up share capital is Rs 1,00,000/-
4. The Applicant submits that the Corporate Debtor placed an order for air conditioners vide its purchase order dated 05.07.2018 for a total consideration of Rs. 15,15,392/- and the same were supplied as per the specifications and terms of purchase orders.

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5. The applicant raised the following invoices in respect of the aforesaid products. The details of the pending invoices are as follows:

- i. Invoice bearing no. 4351008612 dated 13.09.2018 amounting to Rs 12,69,120/-.
- ii. Invoice no. 4351009336 dated 26.10.2018 amounting to Rs 2,45,272/-.

The corporate debtor refused to make payment of Invoice No. 4351008612 dated 13.12.2018, therefore the applicant deposited the Cheque given by the corporate debtor for Rs 12,15,392/-, bearing No. "547849" drawn on the IDBI Bank, Rohini Branch, New Delhi.

6. The said cheque was presented in the bank for encashment by the applicant with its banker, the Hong Kong and Shanghai Banking Corporation Ltd., at its Gurugram Branch. The said cheque was returned unpaid by the bank vide Return Memo dated 02.02.2019 with the remark "Funds Insufficient". The applicant issued a Legal Notice under Section 138, Negotiable Instrument Act, 1881 dated 20.02.2019.

7. It is submitted by the applicant that subsequently, on 13.03.2019 the corporate Debtor made a payment Of Rs.2,00,000/- by way of Cheque, leaving a balance payment of Rs.10,15,392/-

8. The Applicant issued a demand notice dated 18.05.2019 in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the corporate debtor to pay the total outstanding amount of Rs. 10,15,392/- along with interest @ 15% p.a. The said notice was served through speed post as well as through email at its

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registered address as reflected on MCA website. The tracking report for the speed post reflecting 'Item Delivered' has been annexed with the application.

9. That vide reply dated 04.06.2019 the corporate debtor stated that the notice issued by the applicant is false and defamatory and the Corporate Debtor has made sufficient payment with regards to the dues. Also, that the corporate debtor has always been ready and willing to make payment to the applicant. Further, the Corporate Debtor stated few machines delivered by the applicant in the year 2018 were not sold due to sub standard, damaged, in non-working condition and the same are still lying in the stocks of the Corporate Debtor.
10. The Applicant filed the present Application under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per service report filed by the applicant.
11. As per Form V, the total debt outstanding is Rs 10,72,507/- (being principal amount of Rs 10,15,392/- and interest of Rs 57,115/- @ 15% p.a. from 14.03.2019 till date of filling of application) which is due and payable by the corporate debtor to the applicant.
12. The Corporate Debtor has replied to the application and has contended that the ledger statement shown by the applicant is wrong and that the corporate debtor has made payments as per the details provided in the reply. Further, on 11.06.2019 the corporate debtor made a payment of Rs.2,00,000/-, even after receipt of Demand Notice dated 18.05.2019 but no further payment is due since the claim amount demanded by the applicant is adjusted against the unsold machines lying with the corporate debtor. An

invoice had been issued by the corporate Debtor for Rs.94,521/-, which was not reflected in the accounts of the applicant and hence was adjusted.

13. The corporate debtor further submitted that few machines were overpriced, sub-standard, not in working condition and damaged; therefore the said machines could not be sold. Further, the corporate debtor submits that communication was made to the applicant to replace or take back such machinery, but the applicant had never reverted. The approx value of the machines lying in the stock is Rs 4,00,000/-, which was also required to be adjusted. An adjustment of Rs 1,00,000/- was also required to be made, which was given as security by the corporate debtor before signing of the agreement. The corporate debtor denied that any debt is due and all the payments had been duly made. It is further asserted by the corporate debtor that there had been no contract for the payment of interest as claimed by the applicant.
14. Considering the documents on records and submissions of counsels, it manifests that the corporate debtor has tried to create and establish a pre-existing dispute by asserting the sub standard quality and overpricing of air conditioners which was raised only after notice under Section 8 of IBC was issued, without any supporting evidence.
15. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to this application. This leaves no doubt that the default has occurred with respect to the payment of the operational debt of the applicant. Thus mere reply filed by the corporate debtor to the present application, is unable to

establish any pre-existing dispute of genuine nature and the said is merely a moonshine dispute as laid down in “***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited***”.

16. The date of default occurred from 13.10.2018 and the present application is filed on 04/09/2019. Hence the application is not time barred and filed within the period of limitation.
17. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
18. It is pertinent to note that the corporate debtor has not placed on record any correspondences between the parties with respect to any disputes raised by the corporate debtor.
19. The Applicant has filed an affidavit under section 9(3) (b) affirming that the corporate debtor has not raised any pre-existing dispute as regards the amount of operational debt claimed by the applicant. Further, it is submitted that the statutorily prescribed time period for replying to the demand notice is 10 days, the counsel for corporate debtor belatedly issued a reply dated 04.06.2019 whereby they raised false and frivolous contents which were not pre existing at the time of issuance of Demand Notice dated 18.05.2019 and despite the delay of 10 days from the date of service of demand notice the corporate debtor has failed to show pendency of proceedings related to the said debt or any pre-existing dispute.
20. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and

Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete. The default has occurred of the debt which is due and payable since 13.10.2018, Therefore, the applicant is entitled to claim its dues, establishing the default in payment of the operational debt. Hence, the application is admitted.

21. The Applicant has named Mr. Shashi Bhushan Prasad as who is registered vide registration number IBBI/IPA-002/IP-N00676/2018-19/12114 (email: shashibpd@gmail.com) residential address: E-43, Basement, Panchsheel Park, New Delhi – 110017 as the Interim Resolution Professional who is hereby appointed as IRP, subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent. The specific consent has been filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been made.
22. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Shashi Bhushan Prasad to meet out the expenses and perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

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23. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
24. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

HEMANT KUMAR SARANGI
MEMBER (T)

sd/-

DR. DEEPTI MUKESH
MEMBER (J)

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