

LEGALFOXES LAW TIMES

CASE COMMENT ON BLUE STAR LIMITED V. HEAVEN ENGINEERS & CONTRACTORS PRIVATE LIMITED 2173 / 2018

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INTRODUCTION

The Insolvency and Bankruptcy code helps a distressed person to show a revival path and also helps to find solutions. The main key features are dedicated Adjudicating & Appellant Authority i.e (DRT, NCLT and Insolvency and Bankruptcy Board of India), Professionalisation of Insolvency Management. The professionals should be a licensed professionals and are regulated. This was a greatest economic reform put forward for focusing and resolving the problems faced by the creditors regarding the issues arising out of insolvency. The issues relating to the financial failures and insolvencies can be settled by this legal position. Here we are going to do the case study of '*Blue Star Limited v. Heaven Engineers & Contractors Private Limited 2173 / 2018*'.

It was conducted in the in the National Company Law Tribunal New Delhi (Court no. IV). The coram was Dr. Deepti Mukesh, Hon'ble Member (Judicial), Sh. Hemant Kumar, Hon'ble Member (Technical) and the judgement pronounced on 06.02.2020. This case mainly talks about the section 9 of IBC,2016 due to the non-payment of money back to the applicant by the corporate debtor read with the Rule 6 of IBC. Section 9 of IBC speaks about the power of the operational creditors of a company to initiate corporate insolvency resolution process after default. This case was admitted by NCLT, Delhi and the further details are given below.

FACTS OF THE CASE

Applicant is a private limited company incorporated under the provisions of Companies Act, 1956 on 08.10.2010. The Corporate Debtor is private limited company incorporated on 01.10.2012 under the provisions of Companies Act, 2013 Corporate Debtor placed an order for Air Conditioners for a total consideration of Rs. 15,15,392/- and two invoices were drawn. The Corporate Debtor refused to make payment for the second invoice and when the Applicant

deposited the cheque received for the first invoice it was returned by the bank as funds insufficient. 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.

Subsequently, the Corporate Debtor made a payment of Rs.2,00,000/- by way of Cheque, leaving a balance payment of Rs.10,15,392/-. The Applicant issued a Demand Notice under Rule 5 of the Code calling upon the Corporate Debtor to pay the total outstanding amount of Rs. 10,15,392/- along with interest @ 15% p.a. The Corporate Debtor stated that the Demand Notice issued by the Applicant is false and defamatory and the Corporate Debtor has made sufficient payment with regards to the dues. 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. Further, few machines sold by the Applicant are defective and are therefore still withheld in stocks. Therefore, the Applicant filed the Application under Section 9 of IBC for recovery of dues.

ISSUES BEFORE THE COURT:

- Whether the applicant is entitled to claim its dues, establishing the default in payment of the operational debt under section 9 of IBC, 2016.?

FINDINGS OF THE COURT:

Court after 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. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. Court also found that 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.¹ 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 4.06.2019 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.

According to the NCLT, Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete². 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.³

ARGUMENTS FROM THE SIDE OF BOTH APPELLANT AND RESPONDENT

Arguments raised by appellants:-

Prayer to initiate the Corporate Insolvency process against Heaven Engineering & Contractors Private Limited (for brevity 'Corporate Debtor').

- 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.
- 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.
- 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.

¹Abhishek sahuo, Understanding Section 9 Of IBC, 2016

²Ibid note 1

³Ibid note 2

- 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.
- 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.
- 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.
- corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties.

ARGUMENTS RAISED BY RESPONDENTS:-

- corporate Debtor made a payment Of Rs.2,00,000/- by way of Cheque,
- leaving a balance payment of Rs.10,15,392/-
- 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.
- corporate debtor has always been ready and willing to make payment to the applicant.
- 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.
- 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.

DISCUSSION AND REASONING OF THE COURT

The date of default occurred from 13.10.2018 and the present application is

filed on 04/09/2019. Hence according to the NCLT the application is not time barred and filed within the period of limitation. Thus the court concluded that the application by the Creditor is neither time-barred nor outside the jurisdiction of the tribunal. There is no evidence on record to establish that there exists a pre-existing dispute between the Applicant and the Corporate Debtor. Court stated that the dispute between them is merely a moonshine dispute. Therefore the default is proved before the Tribunal and an Insolvency Resolution Professional is appointed and the Moratorium is ordered.

Court directed 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 a Professional, and shall be paid back to the Operational Creditor⁴. 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, it held that terms of Section 14(2) to 14(4) of the Code shall come in force⁵.

DICTION OF THE CASE:

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

⁴Satwik Singh, *Whether An Application Under Section 9 Of The Insolvency & Bankruptcy Code, 2016 Is Maintainable At The Instance Of Workmen Association?*, Mondaq.com, 17 October 2017

⁵Ibid note 4

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 “. The judge noted that corporate debtor has not placed on record any correspondences between the parties with respect to any disputes raised by the corporate debtor.

ANALYSIS OF THE CASE:

The court admitted the case by telling the reason that the applicant is entitled to claim its dues, establishing the default in payment of the operational debt. The court appointed an Insolvency Resolution Professional and the Moratorium is ordered. The application is not time-barred and the dispute is well within the tribunal’s jurisdictional limits. Here the respondent didn’t pay back the foresaid amount pending to the applicant. The cheque given by the respondent was drawn and got the result as ‘insufficient fund’. Thus the applicant can claim back the amount by filing a complaint under the Negotiable Instrument Act. Thus according to the court’s finding in default of the above said remedy, the applicant is eligible to move forward by filing the suit under section 9 of IBC, 2016 for the recovery of debt by initiating the corporate insolvency resolution process. So by establishing the default in payment of the operational debt, the applicant is entitled to claim its dues.

CONCLUSION

The Corporate Debtor has not placed any evidence or document which exhibits the plausible dispute between the parties. Therefore, the reply by the respondent is merely a moonshine dispute. Similarly, the application is not time-barred and the dispute is well within the tribunal’s jurisdictional limits. And also the applicant is entitled to claim its dues, establishing the default in payment of the operational debt. Hence, the application is admitted. Thus the IRP is appointed and Moratorium is ordered.

The Application by the Creditor is neither time-barred nor outside the jurisdiction of the tribunal. There is no evidence on record to establish that there exists a pre-existing dispute between the Applicant and the Corporate Debtor. The Corporate Debtor has not proved that few machines sold by the Applicant are defective or otherwise as claimed. This dispute between them is merely

a moonshine dispute. Therefore the default is proved before the Tribunal and an Insolvency Resolution Professional is appointed and the Moratorium is ordered.