

**NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH**

(IB) 590 (ND) 2017

**In the matter of**

**M/s Blueview Properties Pvt. Ltd.**

..... Petitioner

**V/s**

**M/s Swift Equipments Pvt. Ltd.**

..... Respondent

**SECTION: 9 of IBC, 2016**

**Order delivered on 15.01.2018**

**Coram:**

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)**

**MS. DEEPA KRISHAN, HON'BLE MEMBER (T)**

For the Petitioner (s) :

Mr. Akshay Ringe, Advocate  
Mr. Anupam Singh, Advocate

For the Respondents (s):

None

**ORDER**

**PER SMT. INA MALHOTRA, MEMBER (J)**

The petitioner, as an Operational Creditor, has prayed for initiation of Corporate Insolvency Process against the Respondent Corporate Debtor. As per allegations, at the request of the Corporate Debtor, the Operational Creditor had supplied 3 Liugong Loader CGL 856 equipments for its project

carried out in the State of Bihar. An agreement was duly entered into 14.11.2015 regarding the terms and conditions of supply. The total consideration for the transactions was agreed at Rs. 39 lakhs which was to be paid in 15 equated monthly instalments of Rs. 2,60,000/- payable w.e.f. 21<sup>st</sup> January, 2016. The same was disbursed by way of cheques. It is submitted that on execution of the aforesaid agreement the Operational Creditor delivered the equipment to the Corporate Debtor and received 15 post dated cheques in discharge of the liability towards the cost of equipment. It is the grievance of the Operational Creditor that the aforesaid cheques upon presentation returned dishonoured. Despite repeated demands, the Corporate Debtor has failed to take any steps to pay the same. A case under Section 138/441 of the Negotiation Instruments Act, 1881 was then filed before the Ld. Metropolitan Magistrate, Kolkata.

2. In view of the total silence on the part of the Corporate Debtor, the Applicant/Operational Creditor issued a notice under Section 8 of the Code which was not replied to. Thereafter, the petitioner applicant filed the present petition in the required format, along with the supporting affidavit that no notice of dispute has been raised. The petitioner has also annexed a statement of his Bank Account reflecting that there has been no credit of any of the amounts under the dishonoured cheques.

3. The respondent was served with the notice of this petition vide various modes but none appeared on their behalf. As the submissions made on behalf of the Operational Creditor remain unrebutted, the

Adjudicating Authority proceeds to consider the Operational Creditor's case on merits.

4. The Operational Creditor has filed the necessary documents in support of his case which include the execution of the Agreement between the parties. In addition to the above, they have also attached the photocopies of the dishonoured cheques and the returned memos which form the basis of their complaint under Section 138 of the Negotiable Instruments Act. Copies of the complaint have also been filed. The statement of their Bank account does not reflect credit of the amounts under the dishonoured cheques.

5. In view of the aforesaid uncontroverted facts and in absence of any dispute, the submission that an Operational debt exists, prayer of the Operational Creditor merits consideration.

6. Accordingly, petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith. The said provisions are reproduced as below:

Section 14:

*"14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—*

*(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 debtor 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 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.*

*(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."*

7. The Operational Creditor has not proposed the name of Insolvency Resolution Professional.
8. Accordingly, Mr. Rajendra Prasad Tak (Registration No. IBBI/IPA-001/IP-P00526/2017-2018/10951; Email ID: [rptak@kgsomani.com](mailto:rptak@kgsomani.com); Mobile: 9313102552) is appointed as the IRP from the panel of eligible Resolution Professionals as submitted by IBBI. He is directed to take all steps as are statutorily required of him under the Code, specifically u/s 15, 17 & 18 and shall file his report before the Adjudicating Authority at the end of his tenure as an IRP.
9. To meet the immediate expenses, the Operational Creditor is directed to arrange a sum of Rs. 2 lakhs at the disposal of the IRP to be disbursed against the actual expenses incurred. Copy of the order be given/emailed to the Operational Creditor, Corporate Debtor and the IRP.
10. To come up for the report on 16<sup>th</sup> February, 2018.

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**(Deepa Krishan)**  
**Member (T)**

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**(Ina Malhotra)**  
**Member (J)**