

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 263 of 2019**

**IN THE MATTER OF:**

**Mukesh Agarwal**

**...Appellant**

**Versus**

**RQS Engineering Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant :**                   **Ms. Neela Gokhale, Ms. Shradha Agrawal and  
Mr. Ilam Paridi, Advocates**

**For Respondent :**               **Mr. Rakesh Kumar and Ms. Chetna Bisht,  
Advocates**

**ORDER**

**09.09.2019**       The 'RQS Engineering Private Limited' (Operational Creditor) filed an application under Section 9 of the 'Insolvency and Bankruptcy Code, 2016 (for short, 'the **I&B Code**') for initiation of 'Corporate Insolvency Resolution Process' against 'Thermo Products Private Limited' (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by impugned order dated 21<sup>st</sup> February, 2019 having admitted the application, the said order has been challenged by the Director/Shareholder of the 'Corporate Debtor'.

2.       Learned counsel for the Appellant submitted that there is a 'pre-existence of dispute' and the Adjudicating Authority has failed to consider the same. Reliance has been placed on the reply to the notice under Section 8(1) sent by the 'Operational Creditor'.

3. Learned counsel for the Appellant referred to the minutes of the meeting dated 28<sup>th</sup> November, 2017, wherein it was mentioned that the materials supplied by the 'Operational Creditor' were rejected as they were not suitable for the 'Corporate Debtor'. Reliance has been placed on an *e mail* dated 17<sup>th</sup> November, 2017 and the reply of the said *email* given by the 'Operational Creditor' by letter dated 23<sup>rd</sup> November, 2017 to suggest that there is a 'pre-existing dispute.

4. Learned counsel for the Respondent (Operational Creditor) disputed the facts and submitted that the materials were accepted by the 'Corporate Debtor' and were never returned back as no request was made for replacement. On the other hand, the 'Corporate Debtor' issued post dated five (05) cheques on 20<sup>th</sup> November, 2017; 21<sup>st</sup> November, 2017; 23<sup>rd</sup> December, 2017; 23<sup>rd</sup> December, 2017 and 23<sup>rd</sup> December, 2017 which were bounced.

5. Referring to the aforesaid cheques, it was intimated that the cheques have been issued on 23<sup>rd</sup> December, 2017. It is clear that meeting, if any, held on 28<sup>th</sup> November, 2017 is an afterthought.

6. From the record, we find that the Demand Notice under Section 8(1) was issued by the 'Corporate Debtor' in Form 3 issued on 8<sup>th</sup> May, 2018 referring to Invoice No. 570 dated 20<sup>th</sup> September, 2017 for Rs.19,47,000/-; Invoice No. 574 dated 21<sup>st</sup> September, 2017 for Rs. 19,47,000/-; Invoice No. 654 dated 23<sup>rd</sup> October, 2017 for Rs.19,47,000/-; Invoice No. 656 dated 23<sup>rd</sup> October, 2017 for Rs.19,47,000/- and Invoice No. 657 dated 23<sup>rd</sup> October, 2017 for Rs.19,47,000/- (Total Rs. 97,35,000/-).

7. In reply to the same, the 'Corporate Debtor' by letter dated 18<sup>th</sup> June, 2018 has replied that in the meeting held on 28<sup>th</sup> November, 2017, the 'Corporate

Debtor' had rejected the material as it was not suitable for them. However, it was accepted that the 5 post-dated cheques bearing Nos. 001803, 001804, 001805, 001806 and 001807 dated 26<sup>th</sup> April, 2018; 26<sup>th</sup> May, 2018, 26<sup>th</sup> June, 2018; 26<sup>th</sup> July, 2018 and 26<sup>th</sup> August, 2018 each for a sum of Rs.19,47,000/- were issued with the request to the 'Operational Creditor' that they could show the same to the Banker and get the advance payment as claimed. Thus, we find that there is no communication by the 'Corporate Debtor' to 'Operational Creditor' about the 'pre-existence of dispute'. If there was a quality difference, then there was no question of issuing post-dated cheque dated 26<sup>th</sup> April, 2018 while giving reply to the notice under Section 8(2). The said post-dated cheques have also been bounced and 'Operational Creditor' has no other option but to file the application, which has rightly been admitted by the Adjudicating Authority.

We find no merit in this appeal. It is, accordingly, dismissed. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansilal Bhat ]  
Member (Judicial)

/ns/nn/