

**Filing of Criminal complaint u/s 138 of Negotiable Instruments Act, 1881 before Magistrate Court amounts to Pre-existing Dispute? Also can Corporate Debtor claim settlement of outstanding debt amount from benefits promised by Operational Creditor for availing its services?**

M/s. Ingram Micro India Private Limited “Operational Creditor or OC”	M/s. ASP Computers Private Limited “Corporate Debtor or CD”
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1. OC is leading distributor of IT Hardware and Software Products and CD approached OC for procurement of certain products and OC provided goods to CD timely;
2. The CD accepted goods and there was no demur/objection in relation to goods provided;
3. CD agreed to pay a sum of Rs. 35,00,000/- in November, 2018 in partial discharge of overall dues and transferred Rs. 2,00,000/- on 12.11.2018.
4. Failure of receipt of further payments from CD, the OC deposited a cheque dated 10.01.2019 for an amount of Rs. 48,69,222/- issued by CD drawn on South Indian Bank, however the cheque was returned unpaid with endorsements “insufficient funds”.
5. After dishonour of cheques payments totalling to Rs. 6,50,000/- was paid by CD on different dates.
6. Demand Notice was issued on 25.07.2019 and despite the lapse of 10 days no payment was made by CD and no dispute was brought into the notice of OC.
7. CD contended that OC offered various benefits including various trips and based on such assurance CD purchased goods. In Total 9 tickets were offered worth Rs. 27,00,000/-. However OC failed to issue said tickets even after repeated emails.
8. CD also submitted that OC filed Criminal complaint u/s 138 of Negotiable Instruments Act, 1881 before Magistrate Court, Bombay which shows there is dispute between the OC and the CD. However, it was held that this would not amount to pre-existing dispute as existing dispute is no longer res integra since the said issue was put to quietus by Hon’ble NCLAT in the matter of Sudi Sachdev vs. APPL Industries Ltd., it was held even if accepted as recovery proceedings, it cannot be held to be a dispute pending before a court of law.
9. CD stated that the amount due and payable is Rs. 43,81,987/- and after deducting 27,00,000/- balance remaining is Rs. 16,81,987/- which CD is ready to pay.
10. OC submitted that transactions in relation to booking of tickets happened in May, 2011 and thereafter there has been no buzz. OC referred to e-mail dated 02.11.2018 which mentions CD is liable to make payment irrespective of whether CD was entitled to the benefit of alleged scheme. The adjudicating authority for proper adjudication referred to the terms and conditions set out in scheme which specifically mentions “OC will not be responsible for any Visa Rejection, no alternate benefit will be adjusted for not utilizing tickets”

11. Visa of CD for trip to the UK was rejected twice and as a result of which trip to the United States of America was cancelled voluntarily by CD. Thus contention of CD that Rs. 27,00,000/- has to be credited is needed to be brushed aside.
12. Also, CD in its counter admitted that Rs. 16,81,987/- is due and payable as such debt and default on CD is proved and defence raised by CD is spurious, illusory and hypothetical.

**Application was admitted and IRP was appointed**

**Please feel free to reach out to us!!!**

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