IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.1180/MB-IV/2020
Under Section 9 of the IBC, 2016

In the matter of
SPIK ENVIRO MANAGEMENT PRIVATE LIMITED.
[CIN: U74120MH2013PTC240820]
…Operational Creditor
v/s.
VISION EARTHCARE PRIVATE LIMITED.
[CIN: U73100MH2004PTC150232]
…Corporate Debtor

Order Delivered on: 06.06.2023.

Coram:

Mr. Prabhat Kumar Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:	Mr. Hafeezur Rahman, Ld. Counsel
For the Corporate Debtor:	Mr. S. L. Shah, Ld. Counsel.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) SPIK ENVIRO MANAGEMENT PRIVATE LIMITED, ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of VISION EARTHCARE PRIVATE LIMITED., ("the Corporate Debtor").

   1.1. The petition is filed on 18/08/2020 claiming an amount of Rs.2,77,68,000/-, as due and payable by the Corporate Debtor. The date of default is stated as 24.01.2019 i.e. the date on which the payment was to be due from the Corporate Debtor against invoice raised as per the MOU/ agreement.

   1.2. The operational creditor is involved and decided to extirpate environmental pollution mainly created by the industries. The Corporate Debtor is IIT patent holder technology since the year 2004 to eradicate the pollution caused by the industries. The Operational Creditor submits that, the Director of the Corporate Debtor Mr. S Chandrasekhar met Mr. Chackravarthi D lyengar, the director of Operational Creditor in the month of November, 2017 and discussed about their technologies and their applications sought help from the operational Creditor to spread their superior and sustainable technologies in the country which is lacking due to governmental screening and regulations for new players/ technologies and lack of suitable initial capital/investment both fund and non-fund based and due to the lack of support from the bank as well as in order to get the technologies approved by the government.

   1.3. Sometime in mid of April 2018, once again the Directors of Operational Creditor and the Corporate Debtor had detailed discussions regarding the weaknesses of the Corporate debtor in Business Development and Contractual issues and hence it was proposed that Mr. Chackravarthi D.

Iyengar, Director of the Applicant-Operational Creditor could come on board of the Corporate Debtor as an active member of the Corporate Debtor. Since the Corporate Debtor expressed their inability to pay monthly fees/remuneration, Mr. Chackravarthi D lyengar, explained to them that they need to pay his full fees/remuneration upon acquiring each contract which they accepted.

1.4. The Corporate debtor entered into one MoU with the Applicant-Operational creditor dated 11/15.06.2018 duly signed and executed between both the parties, wherein it was agreed that the Applicant-Operational creditor will facilitate and put efforts towards acquiring the 'projects' in favour of the Respondent-Corporate debtor from the contractors selected by Gujarat Water Supply & Sewerage Board (GWSSB). The Respondent- Corporate debtor as technology provider confirmed to offer its technology agreement with the main contractor quoting for services of design, supply, services by entering into an agreement with the main contractor quoting for services of design, supply, construction, installation, testing and/ commissioning. & maintenance of Sewage Treatment Plants (71 MLD) for four years. Among other things, It was further agreed between the Respondent-Corporate debtor and Applicant-Operational creditor in the MoU that the Applicant- Operational creditor will be compensated a 'Facilitation Fee' equivalent to the sum of Rs.2.5 Lakhs per MLD exclusive of GST of the total capacity of the project in MLD. The payment terms for the aforesaid Facilitation Fee/compensation agreed as 50% of the compensation will be payable against the mobilization advance and balance of 50% in 12 equal monthly instalments within one year from the signing of the contract agreement for the Project.

1.5. Thereafter, the Corporate Debtor and Mr. Chackravarthi D. Iyengar, Director of the Applicant-Operational Creditor entered an agreement on

25.11.2018 whereby Mr. Chackravarthi D. Iyengar was appointed as whole-time director of the Corporate Debtor from 01.12.2018 and the said agreement is stipulated payment of compensation for the services of Mr. Chackravarthi D. Iyengar, to the Operational creditor upon presentation of invoice by Operational Creditor. The Clause 4 of the said agreement stipulated that " *IDC will be focusing on creating and acquiring technology markets for VECs processes and products to extent of; i) 100 MLD per year of sewage/waste treatment ii) 200 MLD in 2 years iii) 1000 MLD sewage equivalents over ten years; iv) technology fees of Rs. 10Cr/yr. or 100-120 Cr or move over 10years of technology fees*. Clause 5.1 stipulated compensation for such services @ 22.5% of the Corporate Debtors fees as work order excluding taxes from the client/customer/contractor exclusive of GST and shall become payable towards generating the stated activities under clause 4. Clause 5.2 provides that The Compensation includes travel, hotel, structuring the enquiry/tender to enable participation of SBT and incidentals. The said compensation is payable to M/s. SPIK Enviro Management Private Limited, Navi Mumbai.

1.6. The applicant facilitated a meeting with Raj Kamal Builders & Infrastructure Private Limited in order to finalize the above mentioned arrangement for execution of the works which was agreed to by all stakeholder.

1.7. GWSSB informed Applicant- Operational Debtor & RBPIL that the new plants of capacities ranging from 1 MLD to 5 MLD will be inducted/established with SBT technology and the total capacity of all the plants put together came to 75 MLD minimum.

1.8. On 25.08.2018, the First contract was secured from Gujarat - from RBPIL for 20 MLD (Technology fees alone) at Rs.2.17 Crores with 10%

mobilization advance and balance as per milestone events noted in the MoU between RBPIL.

1.9. Thereafter, on 13.12.2018 an Office space was acquired by the Applicant at Gurgaon on lease to run the functions of the Corporate Debtor under the MOU and Agreement.

1.10. The Corporate Debtor has got three work orders from three Companies based in Gujarat through Applicant. The Applicants have filed a Police Complaint against the Corporate Debtor and they have replied to the same and in that reply has admitted the claim of the Applicants.

1.11. Instead of paying the payable dues, the Corporate Debtor sent one notice dated 18.07.2020 to the Applicant's director, asking him to resign from the Board of the Corporate Debtor. The said notice was replied by the applicant denying the allegations and demanded the amount payable from the Corporate Debtor.

1.12. In view of the above the Applicant issued a Demand Notice dated 23.07.2020 under Section 8 of the Code, thereby claiming the outstanding principal amount of Rs. 2,77,68,000/- . The Corporate Debtor has failed to reply the said notice.

2. The Corporate Debtor vide its reply dated 01.04.2021 has stated that, the Applicants are claiming amounts under Agreement dated 25.11.2018 which has not been executed with the Applicant; the Applicants are claiming amounts on the basis of Proforma Invoices; the Applicants are claiming amounts under Reimbursement Bill although such payment has not been contemplated and/or agreed to be paid to the Applicant; the Applicants are claiming money for work not done/under Work Orders not awarded to Raj Kamal under the MOU dated

or 11.06.2018 which automatically stood terminated and for money not received by the Corporate Debtors; the Corporate Debtors cannot be called upon to make payments to the Applicants although the Applicants have breached the terms of the said MOU and have not performed their obligations under the said MOU; the Director of the Applicant, Mr Iyengar D Chakravarthi is claiming alleged amounts allegedly due to him vide this Petition, which is legally not tenable; there are disputes pending with the Applicants and its Director Mr Iyengar since 2018 as regards the non-receipt of all the Work Orders under MOU dated 11.06.2018, Applicant's non-performance of the scope of work under MOU dated 11.06.2018, amongst others, reimbursement of losses suffered by the Corporate Debtors due to the Applicant's nonperformance of its obligations under MOU dated 11.06.2018 as a result of which the Corporate Debtors have suffered Work Order loss of 51.4 MLD of order value amounting to Rs.5.7 Crores; the fact that a police complaint was filed itself shows the existence of a dispute; the alleged dues are disputed as after the said MOU stood terminated, no money is due and payable by the Corporate Debtor to the applicant; the admittedly amounts due and payable have been paid, there was dispute as regards the payment sought by the applicants as the applicants were demanding payments which were not due and payable. The Corporate Debtor has denied all the statements, allegations, submissions contained in the petition.

3. The Operational Creditor vide its affidavit in rejoinder has stated that, there is no board resolution filed therefore the present reply cannot be taken into consideration; the preliminary objections raised by the Corporate Debtor in its reply are false and hence denied by the Operational Creditor.

4. The Corporate Debtor vide its affidavit in sur rejoinder has denied each and every allegation stated by the Corporate Debtor in its affidavit in rejoinder and has also filed Board resolution dated 20.03.2021 authorizing Mrs. Uma

Shankar, the director, to sign and execute documents/replies/affidavits in the proceeding under IBC .

5. The Operational Creditor has proposed the name of Interim Resolution Professional.

Findings:

6. This bench has carefully gone through the documents and pleadings available on record and considered the arguments.

7. The Operational Creditor has claimed Rs. 48.95 lakhs as Facilitation Fees towards award of 19.6 MLD projects; Rs. 30 lakhs towards travel cost; Rs.57.94 as lump sum compensation being proportionate technology selling price in relation to 6 other projects ; and Rs.15 Lakhs towards remuneration of Mr. Chackravarthi D. Iyengar in terms of WhatsApp acceptance. The Corporate Debtor paid a total sum of Rs. 22.21 lakhs to the Operational Creditor which is not disputed by the applicant also. Apart from this the Operational Creditor has claimed compensation of Rs.48 lakhs towards sweat equity and Rs.100 lakhs for lost opportunities.

8. On the co-joint reading of the MOU dated 15.06.2018 and 25.11.2018, this bench finds that Mr. Chackravarthi D. Iyengar was appointed on the Board of the Corporate Debtor to mobilize additional business and the payment for the services rendered by him was to be made to the Operational Creditor. Though, the MOU dated 25.11.2018 stipulate target volume of business but the compensation clause therein is linked to technology fees to be received by the Corporate Debtor under each work order. Further the said compensation included travel, hotel, structuring the inquiry/ tender to enable participation and incidentals. It is undisputed fact that Corporate Debtor received work orders for

19.6 MLD from M/s. Rajkamal out of 18 tenders listed in Annexure I to MOU dated 11.06.2018. On reading of said MOU also this bench dose not finds that the compensation for services of the Operational Creditor was to be paid only upon award of all 18 tenders. It is pertinent to refer Clause 6 and 8 of the said MOU which inter alia provides that "*the Corporate debt will compensate the Operational Creditor as a Facilitation fee equivalent to a sum of 2.5 lacs per MLD exclusive of GST of the total capacity of the 'Project' in MLD terms detailed as per Annexure I" and "50% of the Compensation value as Clause 6(a) will be payable against mobilization advance and balance 50% in twelve equal monthly installments within one year from the date of signing of the Contract Agreement for the 'Project' as per Annexure I.*

9. Though there is no tangible dispute in relation to claim of Rs. Rs. 48.95 lakhs as Facilitation Fees towards award of 19.6 MLD projects, out of which Rs. 22.21 lakhs is already paid. This bench finds that the corporate debtor has also disputed its obligation to pay Rs.15 Lakhs towards remuneration of Mr. Chackravarthi D. Iyengar in terms of WhatsApp acceptance, but the dispute in relation thereto appears to be a feeble argument. Accordingly, this bench finds that a sum of Rs.41.74 lakhs is due and payable. About claim of Rs. 30 lakhs towards travel cost and Rs.57.94 as lump sum compensation being proportionate technology selling price in relation to 6 other projects, this bench finds that a compensation was inclusive of all cost and payable upon occurrence of stated milestones. Whether such sums are payable in terms of MOU or not is a matter of determination which cannot be taken up in the present proceedings. Further, the claim of compensation of Rs.48 lakhs towards sweat equity and Rs.100 lakhs for lost opportunities also requires adjudication in terms of the MOU considering that MOU is silent on these aspects.

10. In view of the above, this bench is of the considered view that out of total debt of Rs.277.68 lakhs has claimed in default in the present application, a sum of Rs. 41.74 Lakh only can be said to be undisputed debt and the remaining amount of debt amounting to Rs. 235.98/- claimed in default requires adjudication of disputes. Since the amount of undisputed debt is less than 1 crore.

11. Considering the facts placed before us, this bench is of the view that in such circumstances, we find that the present case deserves to be dismissed under Section 9 read with Section 4 of the Insolvency and Bankruptcy Code, 2016.

ORDER

12. The petition bearing CP (IB) No.1180/MB-IV/2020 filed by SPIK ENVIRO MANAGEMENT PRIVATE LIMITED, ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in case of VISION EARTHCARE PRIVATE LIMITED., ("the Corporate Debtor") is **Dismissed.**

13. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law.

Sd/- Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

06.06.2023.