

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P. (IB) No. 56/BB/2019  
U/s 9 of IBC, 2016  
R/w Rule 6 of I&B (AAA) Rules, 2016

**In the matter of:**

M/s. Amtech Electronics (India) Limited  
E-6, G I D C Electronic-Zone,  
Gandhinagar,  
Gujarat – 382 028. - Petitioner/Operational Creditor

**Versus**

M/s. Ecolibrium Energy Private Limited  
F-101, Wilson Manor,  
13<sup>th</sup> Cross, Wilson Garden,  
Bengaluru – 560 027. - Respondent/Corporate Debtor

**Date of Order: 22<sup>nd</sup> July, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner: Ms. Kavitha N, Advocate  
Ms. Suja Surendran, Advocate

For the Respondent: Mr. Varun Tallam, Advocate

**Per:** Dr. Ashok Kumar Mishra, Member (Technical)

Heard on: 30.01.2019, 07.02.2019, 08.03.2019, 28.03.2019, 26.04.2019,  
31.05.2019, 21.06.2019, 09.07.2019


**ORDER**

1. C.P.(IB) No. 56/BB/2019 is filed by M/s. Amtech Electronics (India) Limited ('Petitioner/Operational Creditor') under Section 9 of the

Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Ecolibrium Energy Private Limited ('Respondent/Corporate Debtor') on the ground that the Corporate Debtor committed a default for total outstanding amount of Rs. 7,03,337.80/- vide invoice no. 10000793 dated 17.10.2015.

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

- (1) M/s. Amtech Electronics (India) Limited ('Petitioner/Operational Creditor') is a Company incorporated and having its address at E-6, G I D C Electronic Zone, Gandhinagar, Gujarat – 382 028. The Company inter alia is engaged in the business of manufacturing industrial electronics product and has engaged in business with M/s Ecolibrium Energy Private Limited for supply of one AXPERT-EAY ENGINEERED SYSTEM and one AXPERT-VT 240S ENGINEERED SYSTEM.
- (2) M/s. Ecolibrium Energy Private Limited ('Respondent/Corporate Debtor') is a Company incorporated on 04.11.2008 under the provisions of Companies Act, 1956 with CIN U40108KA2008PTC048176 and having its registered office at F-101, Wilson Manor, 13<sup>th</sup> Cross, Wilson Garden, Bengaluru – 560 027.
- (3) The Authorised Share Capital of the Corporate Debtor is Rs. 11,52,00,000/- (Rupees Eleven Crore Fifty Two Lakh Only) and the Paid-up Share Capital of the Company is Rs. 11,32,51,300/- (Rupees Eleven Crore Thirty Two Lakhs Fifty One Thousand and Three Hundred Only).



- (4) The Operational Creditor had supplied goods amounting to Rs. 7,03,337.80 vide invoice no. 10000793 dated 17.05.2015 but no payment was received against the above supply of goods.
  - (5) The goods have been satisfactorily accepted by the Corporate Debtor without raising any dispute pertaining to their quality, quantity or durability. The same have been consumed by the Respondent and the Respondent has defaulted to clear dues of the Operational Creditor.
3. The Operational Creditor issued Demand Notice dated 23.07.2018 to the Respondent and the same was responded to vide a reply notice dated 24.08.2018
  4. The Respondent has filed its Statement of Objections dated 21.06.2019, by inter alia contending as follows:
    - (1) The Application is bound to be dismissed on the ground that the said claim is disputed by the Corporate Debtor and is liable to be dismissed under Section 9 (5) (ii) (d), wherein the Corporate Debtor has issued a notice of dispute to the Operational Creditor, thereby disputing the claim of the Operational Creditor.
    - (2) The Corporate Debtor has at length elucidated the dispute between the Parties in its reply notice dated 23.08.2018 and it is well established by the Hon'ble Supreme Court that a pre-existing dispute, brought to the notice of the Operational Creditor in response to the Demand Notice, would be sufficient ground for the rejection of its Application.
    - (3) The Corporate Debtor had long business relationship with the Operational Creditor for more than 2 years, wherein the Corporate Debtor had given business to the Operational Creditor

valuing more than crores of rupees and all the payments were cleared as and when the Invoices were raised by the Operational Creditor.

- (4) The Corporate Debtor was facing quality issues and issues relating to after sale services provided by the Operational Creditor and the said concerns were raised by the Corporate Debtor to the Operational Creditor. The Corporate Debtor keeping in mind the long business relationship with the Operational Creditor once again on 12.08.2015, placed a Purchase Order for the purchase of certain electronic products from the Operational Creditor, based on the assurance provided by the Operational Creditor that in future the quality of products supplied and after-sale services shall be up to the mark and satisfactory to the requirements of the Corporate Debtor. Further, the Operational Creditor had also promised and committed to fix all concerns pertaining to the products which were already supplied.
- (5) The Operational Creditor inspite of repeated assurances of supplying quality products and maintaining excellent after-sale services miserably failed to keep its commitments. The Corporate Debtor then expressed its dissatisfaction/displeasure and raised complaints vide e-mails dated 12.10.2015 and 13.10.2015, pertaining to the negative feedback of poor quality of products and services and also about the false commitments/assurances provided by the Operational Creditor. The officers of the Corporate Debtor also requested for a meeting with the top management of the Operational Creditor for discussing its concerns.

- (6) The Corporate Debtor in the aforesaid emails, inter alia, bought the following to the notice of the Operational Creditor:
- a. The Operational Creditor was facing issues pertaining to delivery time, as a result of which the Corporate Debtor was liable to pay late delivery charges to its clients and the working capital of the Corporate Debtor was diminishing due to it.
  - b. The end Client/Customer of the Corporate Debtor suffered production loss due to non-availability of the service engineer of the Operational Creditor at the site at agreed times.
  - c. The motor supplied by the Operational Creditor was in breakdown condition for two months and the said motor was heavily burnt during its testing by the service engineer of the Operational Creditor.
  - d. The VFD Panels supplied by the Operational Creditor were not properly installed and due to such poor quality services, service calls were in great numbers and the Operational Creditor could not provide timely and effective services.
- (7) Owing to the unsolved complaints, the Corporate Debtor was not willing to accept any further products of the Operational Creditor. However, the Operational Creditor assured that the products which were ready for delivery will have no complaints either in quality or in the services thereafter and persuaded the Corporate Debtor to accept the product.
- (8) The Corporate Debtor was reluctant to make any advance payment against the new products and intimated that the payments would be made only when the products were delivered

and tested to the Corporate Debtor's satisfaction. However, the Operational Creditor insisted on post dated cheque as per their Company's policy and assured that all the complaints will be solved on a priority and also assured that the cheque will be presented only upon resolving the previous complaints raised by the Corporate Debtor.

- (9) Upon believing the assurance of the Operational Creditor, the Corporate Debtor handed over post dated cheque, dating 45 days from the date of delivery of the products and requested the Operational Creditor not to present the cheque unless all previous complaints were resolved. The cheque was handed over as a security but not against any legal debt or liability.
- (10) The Corporate Debtor again faced several hardships with the products supplied by the Operational Creditor and inspite of raising complaints repeatedly, the services provided were not within the agreed timelines and the Corporate Debtor was completely disappointed with the services of the Operational Creditor. That in view of the inferior quality of services provided by the Operational Creditor, the Corporate Debtor's client production cycle was disturbed and was thus forced to inform their bankers to stop payment of the post dated cheque.
- (11) The Operational Creditor with a malafide intention to make unjust enrichment deposited the aforesaid cheque with the bankers and accordingly issued a legal notice under Section 138 of the Negotiable Instruments Act to the Corporate Debtor. The Corporate Debtor replied to the said Legal notice by denying the outstanding debt. The Operational Creditor then filed a Private Complaint bearing Criminal Complaint No. 1522 of 2016,

pending before the Learned 3<sup>rd</sup> Additional Senior Civil Judge and Additional CJM, Gandhinagar, Gujarat, against the Corporate Debtor under Section 138 of the Negotiable Instruments Act. The Corporate Debtor approached the Hon'ble High Court of Gujarat, at Ahmedabad in Special Criminal (Quashing) No. 3564 of 2016, against the Operational Creditor for quashing the aforesaid proceedings, pending before the trial court and the Hon'ble High Court of Gujarat, at Ahmedabad granted stay in the said matter.

- (12) The Corporate Debtor had procured in total 78 number of Drives from the Operational Creditor till date and the total value of the said Drives with applicable taxes was amounting to Rs. 1,20,05,585.60 and also in addition to the above, the Operational Creditor has raised invoices for the services rendered amounting to Rs. 94,220.20 which is aggregating to an amount of Rs. 1,20,99,805.80. Out of the 78 Drives supplied by the Operational Creditor, around 24 Drives faced serious issues in their working, the value of which amounts to Rs. 33,94,807.61 (approx).
- (13) The Corporate Debtor suffered huge losses and bad reputation in the market owing to the poor quality of the products supplied by the Operational Creditor and the clients of the Corporate Debtor retained payments amounting to Rs. 19,75,515.00 and accordingly the Corporate Debtor suffered business loss worth Rs. 1,00,94,109.00 as certain clients of the Corporate Debtor cancelled the order and returned the goods. The Corporate Debtors further suffered loss amounting to Rs. 4,72,861.00 towards handling costs, thereby totaling to an amount of Rs. 1,25,42,485.00 as on 31.08.2018, which the Corporate Debtor is liable to recover from the Operational Creditor.

5. Heard Ms. Kavitha N., learned Counsel for the Petitioner and Mr. Varun Tallam, learned Counsel for the Respondent. We have carefully perused the pleadings of the parties and the extant provisions of the Code.
6. The case of the Petitioner primarily relates to the default by the Corporate Debtor for a total outstanding amount of Rs. 7,03,337.80/- raised vide invoice no. 10000793 dated 17.10.2015 for goods and/ or services supplied by the Petitioner to the Respondent.
7. The claim of the Petitioner is disputed by the Respondent on the grounds that the goods and services provided by the Petitioner were defective/unsatisfactory as evinced in emails dated 12.10.2015 and 13.10.2015, and that invoice dated 17.10.2015 was accepted on the basis of the assurances provided by the Respondent with respect to the quality of goods provided by the Petitioner. However, even after repeated requests the Petitioner was unable able to rectify its wrongs and hence, the payment was withheld.
8. We *prima facie* observe that the date of default as per the Petitioner occurred on **17.10.2015** which squarely falls outside the limitation period of 3 (Three) years as the instant application under Section 9 was filed on 07.01.2019. Section 238A of the Code makes provisions of Limitation Act would apply to proceedings under the Code.
9. The Hon'ble Supreme Court in *B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates* held that "*It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article*

*137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.”*

10. Therefore, in light of the law stated above, we note that the Petitioner has filed the instant Petition on 07.01.2019 which is more than 3 (Three) years from the date of default. Further, the Petitioner has neither prayed for condonation of delay under Section 5 of the Limitation Act, 1963 nor satisfied this Tribunal that the Petitioner had sufficient cause for not making the application within such period.
11. Further, on perusing the facts of the instant petition filed under Section 9 of the Code, there appears to be an existence of dispute regarding the default and debt in question due to the deficiency in the goods and/or services supplied by the Operational Creditor. On relying on the decision of the Hon'ble Supreme Court in *Mobilox Innovations Private Limited v Kirusa Software Private Limited* in Civil Appeal No. 9405 of 2017, we reiterate that the Adjudicating Authority must reject the petition under Section 9(5)(ii)(d) if notice of dispute has been received by the operational creditor. Whereas, in the instant case, the Respondent had raised certain issues regarding the goods and/or services vide its reply notice dated 24.08.2018. On perusal of the said notice, we find that the Respondent had raised a conceivable dispute that would require further investigation.
12. However, the Tribunal cannot enter into enquiry with regard to the disputed questions in a case filed under the IBC, 2016, which is summary in nature and the issues to be primarily decided basing on the principles of natural justice. The question of deficiency in the goods and/or services as claimed by the Respondent has to be examined in an appropriate proceeding in a case filed in accordance with the law and

the issue cannot be adjudicated in the instant company petition. Therefore, we are of considered opinion that there is a dispute with regard to debt in question due to the alleged deficiency in the goods and/or services provided by the Respondent and thus it is not fit to be admitted.

13. In view of the above facts and circumstances, and law as cited above, we are of the considered view that the present case is not a fit case to admit and thus the Company Petition bearing C.P. No. 56 of 2019 is hereby dismissed. However, this order will not come in the way of Petitioner to invoke any other remedy available under any other law so as to get the grievances redressed. No order as to cost.

  
**(ASHOK KUMAR MISHRA)**  
**MEMBER, TECHNICAL**

  
**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**

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