



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.716/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

**Satec Envir Engineering (India) Private
Limited**

[CIN: U29197MH1991PTC064661]

...Operational Creditor/Applicant

V/s.

**Shapoorji Pallonji and Company
Private Limited**

[CIN: U45200MH1943PTC003812]

... Corporate Debtor/Respondent

Order pronounced on : **24.02.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Mr. Sameer Pandit a/w Ms.
Krina Gandhi and Mr. Anmol
Menon, Advocates.

For the Respondent(s) : Mr. Amir Arsiwala a/w Ms.
Gayatri Mohite, Advocates.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition being C.P. (IB) No. 716/NCLT/MB/C-IV/2021 filed by M/s. Satec Envir Engineering (India) Private Limited, the Operational Creditor, under section 9 of Insolvency & Bankruptcy Code, 2016 (I & B Code) on 15.01.2021 seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Shapoorji Pallonji & Company Private Limited, Corporate Debtor, claiming a sum of Rs.3,01,99,983/- (of which Rs.23,70,326/- is the Principal amount and Rs.62,29,657/- is interest under MSME Act) in default. It is stated in Clause-2 of Part IV of Form-V that *“The default has been occurred on different dates as per respective invoices, but we are considering 24th August, 2019 as the date of default, as from that date we have not received any payment against the invoices raised.”*
2. The Applicant/ Operational Creditor was awarded on contract for supply, fabrication at erection of structural steel works, sub contract for design and build Mahatma Gandhi International Conference Centre Project at Niamey, Niger and issued a purchased order dated 6th November, 2018. The Applicant/ Operational Creditor issued various Tax Invoices from the period starting May, 2019 till August, 2019 and a Debit Note dated 15th November, 2019 towards additional claim charges for a sum of Rs.1,29,90,613.04. The Applicant/ Operational Creditor has also filed a copy of computation of payment receivable as per Exhibit -F wherein the Applicant has provided detailed working of total receivable from the Corporate debtor amounting to USD 3,46,018.67.
3. The Applicant issued a Demand Notice in Form-III on 1st February, 2021 asking the Corporate Debtor to pay the amount in default. The Corporate Debtor has responded to this Demand Notice vide Letter dated 22nd February, 2021 denying its liability

to pay. Instead, the Corporate Debtor has made counter claim of USD 1,94,239.27 raising issues in quality material supply, delay in its procurement and finalization of design resulting into delaying fabrication work and postponement of delivery.

4. The Ld. Counsel for the Corporate Debtor has drawn our attention to an email dated 7th March, 2019 (forming part of reply dated 21st February, 2022) whereby an employee of the Corporate Debtor had sought response of Mr. Gaurav Agrawal of the Applicant Operational Creditor to an email dated 2nd July, 2019 from another employee of the Corporate Debtor, proposing deductions in the Applicant Operational Creditor's bills. Further, the Counsel drew our attention to an email dated 25th October, 2019 (forming part of reply dated 21st February, 2022) whereby Applicant Operational Creditor was shared full and final SOA and the details for Applicant Operational Creditor's reference and acceptance.
5. The Ld. Counsel for the Applicant/ Operational Creditor further drew our attention to email dated October 15, 2019 written by the employee of the Corporate Debtor to the Employee of Applicant stating that "*please go ahead and help Ms. Jeena to get the material back from custom. We assured you that you will get the payment for this material*" and also drew our attention to the WhatsApp chats wherein the Corporate Debtor has pleaded cash crunch in the project.
6. We have heard both the counsel and perused the pleadings available on records.
7. On perusal of reply to the demand notice dated 22nd February, 2021, the Corporate Debtor has referred to an email dated 9th September, 2020 wherein the Operational Creditor has submitted that "*we have not made any unrealistic claim as stated from your*

end. In this regard, we shall have discussion and shall provide all necessary supporting and logical justification of our claim.” This email was in response to an email of even date written an employee of the Corporate Debtor stating that *“we have gone through your mail and found your ‘proposed claims’ totally unrealistic and far from the facts and having no logic which cannot be entertained. However based on the placed order and the work executed we are attaching herewith the settlement statement for further discussion and mutual agreement to conclude the matter.”* The Applicant in his Rejoinder has submitted that the settlement was not accepted as was not recorded in the work order and it cannot lead to conclusion that there existed a prior dispute. As regards defect in quality of work and material supplied, the Applicant has submitted these were rectified as earlier pointed out.

8. We have perused Exhibit -F annexed to the Application showing computation/ schedule of payment receivable from the Corporate Debtor amounting USD-3,46,018.67. On perusal of the statement it is seen that it is admitted by the Applicant itself in the said exhibit that the Corporate Debtor has claimed USD 3,59,497.95 against which the Applicant admits USD 20,647.39 as the correct amount. It follows from it that there existed dispute in so far as it pertains to determination of the correct amount of claim of the Corporate Debtor.
9. It is settled law that the Code is not meant for the recovery of the debts due, hence, it excludes the debts which fall under the category of disputed debts. The Adjudicating Authority can not go into the merits of dispute to determine the actual amount receivable by the Creditor and it is sufficient to deny admission of Application u/s 9 of IBC, 2016 if there existed a dispute in

relation to the debts between the parties. The plea of the Applicant that claims made by the Corporate Debtor are exaggerated and not maintainable to the extent of claim itself shows that determination of Corporate Debtor claim is in dispute.

10. In view of above facts, this Tribunal is of the considered opinion that there was a pre-existing dispute in relation to the amount of debt claimed at the time of filing the Petition, hence, the present Company Petition is not maintainable u/s 9 of Code. Accordingly, CP (IB) No. 716/MB-IV/2021 is **dismissed**.

ORDER

11. The Company Petition bearing CP/(IB)/716/MB-IV/2021 filed by Satec Envir Engineering (India) Private Limited, the Operational Creditor, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Shapoorji Pallonji and Company Private Limited, the Corporate Debtor, is **Dismissed**.
12. 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 Company Petition.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

/Dubey/