

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

CP (IB) No. 414/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Spray Engineering Devices Limited

[CIN: U00000CH2004PLC027625]

...Operational Creditor/Applicant

V/s

Swaraj Green Power and Fuel Limited

**(Formerly known as Swaraj India Agro
Limited**

[CIN: U01409PN2010PLC137013]

...Corporate Debtor/Corporate Debtor

Order Dated: 14.07.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Operational Creditor(s) : Mr. Naveen Arora, Advocate.

For the Corporate Debtor(s) : Ms. Prachi Wazalwar, Advocate.

ORDER

Per: Prabhat Kumar, Member Technical

1. This is an Application being C.P. (IB) No. 414/MB/C-IV/2021 filed on 06-03-2021 by Spray Engineering Devices Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Swaraj Green Power and Fuel Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

1.1 The total amount of debt claimed is Rs. 2,33,35,382/- (Rs. Two Crores Thirty Three Lakhs Thirty Five Thousand Three Hundred and Eighty Two Only) alongwith interest @ 24% p.a.

2. The Operational Creditor is a company incorporated on 08.11.2004 and is pioneer in the fields of Evaporation, Heat Exchanger, Condensation and Crystallization. The Corporate Debtor is a company incorporated on 30.07.2010 and is engaged in agricultural and animal husbandry service activities.

2.1 The Operational Creditor herein submitted an offer to the Corporate Debtor on 02.05.2016 for providing the services of designing, engineering, supply, erection and commissioning for Boiling House of the Corporate Debtor for the project at Post Upalave, Tal. Phaltan, District Satara, Maharashtra, India. After pursuing the offer submitted by the Operational Creditor, the Corporate Debtor issued a Letter of Intent (LOI) dated

14.05.2016 highlighting the scope of work and the contract price mentioned therein was Rs. 9,50,00,000/- (Rupees Nine Crores Fifty Lakhs only) and thereafter issued another Purchase Order dated 25.07.2016 for the amount of Rs. 20,00,000/- (Rupees Twenty Lakhs only).

2.2 Pursuant thereto, the Corporate Debtor and the Operational Creditor entered into a Supply Agreement on 19.06.2016. The terms of payments as agreed upon by the parties by virtue of entering into the supply agreement dated 19.06.2016 were mentioned in Clause 3.0 (C) of the agreement which stated that 10% amount payable as advance along with purchase order against corporate guarantee, 20% amount payable against submission of GA drawings/PIDs / Engineering layout against corporate guarantee, 50% amount payable against bar chart or erection along with 100% taxes and duties on prorated basis, 10% amount proportionately paid against progress of Erection & Commissioning and lastly, 10% amount against Successful & Satisfactory Erection and commissioning of the plant against performance bank guarantee."

2.3 The term of the Supply Agreement wherein it was stated that 50% amount was payable against bar chart or erection along

with 100% taxes and duties or prorata basis was the term but the same was not workable, therefore, they entered into an addendum i.e. payment will be released immediately on receipt of material at site and for tubes, payment will be received the moment the supplier invoice will be submitted to the Corporate Debtor which is mentioned in the letter dated 03.11.2016.

- 2.4 The Corporate Debtor issued 2 purchase orders dated 19.06.2016 and 25.07.2016 upon the Operational Creditor for the purchase, design, engineering, erection, supervision and commissioning of Equipments, aggregating to Rs. 9,70,00,000.00 (Rupees Nine Crores Seventy Lakhs only) (exclusive of taxes).
- 2.5 The Operational Creditor issued several invoices Towards sale and supply of goods and services of various dates on Corporate Debtor aggregating to Rs. 10,98,22,678.00 (Rupees Ten Crores Ninety Eight Lakhs Twenty Two Thousand Six Hundred and Seventy Eight only).
- 2.6 The Corporate Debtor acted in complete breach of the terms of the Supply Agreement dated 19.06.2016 and the afore-stated addendum and started defaulting in payment of due amount to the Operational Creditor.

- 2.7 The Operational Creditor states that various correspondences were exchanged between the parties evidencing that the Operational Creditor time and again requested the Corporate Debtor to release the pending amount, however, the Corporate Debtor either chose not to reply or replied citing reasons which are unsubstantiated. The Operational Creditor stated the details of 37 invoices against which the Corporate Debtor failed to give the amount due to the Operational Creditor.
- 2.8 The Corporate Debtor issued a demand notice dated 22.11.2019 under Insolvency and Bankruptcy Code, 2016 which was duly refuted by the Operational Creditor vide letter dated 01.10.2018 stating that there was no delay or latches or deficiency on the part of the Operational Creditor herein and that any delay which has been caused is because of the non-payment by the Corporate Debtor who acted in complete breach of the terms of the Supply Agreement dated 19.06.2016 and the addendum.
- 2.9 The Operational Creditor states that various reminders by way of e-mails and telephone were made to the Corporate Debtor for payment of outstanding dues and after non-payment the Operational Creditor herein issued a demand notice under

Section 8 of the IBC to the Corporate Debtor on 01.12.2020 who failed to reply within the statutory time of 10 days.

2.10 The Operational Creditor states that the account of Corporate Debtor is still running in the books of accounts of the Operational Creditor.

2.11 After giving effect to partial payment of Rs. 8,64,87,296.00 (Rupees Eight Crores Sixty Four Lakhs Eighty Seven Thousand Two Hundred and Ninety Six only) received by Operational Creditor from Corporate Debtor as per the Books of Accounts of Operational Creditor, Rs. 2,33,35,382.00 (Rupees Two Crores Thirty Three Lakhs Thirty Five Thousand Three Hundred and Eighty Two Only) are due and payable by Corporate Debtor to Operational Creditor.

3. The Corporate Debtor in its reply dated 16.12.2021 states that time and again, the quality department of Corporate Debtor and all other authority in charge had disputed regarding the delay in completion of the work with respect to the terms of the Supply Agreement dated 19.06.2016 as well as the quality of the work which was already completed.

- 3.1 The Corporate Debtor states that as per the agreement dated 19th June 2016, the Design, Supply and Erection work was supposed to be completed before 15.09.2016 and the Commissioning work before 30.09.2016, however, the Petitioner had failed to adhere to the above timelines in spite of various alterations to the timelines. The Corporate Debtors have also raised disputes via email conversations as well as via letter communications on 16.07.2016, 20.07.2016, 26.09.2017, 21.01.2018, 20.02.2018, 10.03.2018 and 17.08.2018.
- 3.2 After frequent requests for advance payment, the Corporate Debtor released INR 10 Lakh but even after receipt of the same, the Petitioner failed to supply the pending material. The Corporate Debtor also pointed out the pending bill of INR 31,55,000/- and the Corporate Debtor completely disagreed on the bogus bill raised by the Petitioner as there were too much of pending work and no proper supply was made. The Corporate Debtor states that it had suffered huge losses due to the conduct of the Petitioner.
- 3.3 The Corporate Debtor states that the clause 9.0 of the agreement dated 19.06.2016 states that in the event of any conflict between the Parties on account of technical grounds or

scope, the Arbitrator decision shall be final and binding on both the parties and hence, the dispute between the parties being on technical and engineering work, the jurisdiction lie with the Arbitration.

- 3.4 The Corporate Debtor states that the Petitioner is in fact liable to pay a huge sum to the Corporate Debtor for the loss and damages suffered by the Corporate Debtor due to the acts and omissions of the Petitioner and craved leave to put on record the proof of the huge losses and damages faced by it.
4. The Corporate Debtor has filed a convenience compilation dated 05.05.2023 consisting of the agreement, invoices and email and other correspondences between the parties.
5. The Operational Creditor has filed an Additional Affidavit dated 09.06.2023 placing on record the email pertaining to the correspondence with the Corporate Debtor and the certificate u/s 65-B of the Indian Evidence Act, 1872.
6. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.
- 6.1 The Corporate Debtor drew out attention to minutes of meeting dated 21.01.2018, wherein the Operational creditor was told about the defects and non-supply of goods impacting installation work.

However, the Operational Creditor expressed financial difficulty which it had in its letter 24.07.2018 also.

- 6.2 This Bench is of the considered view that the vide the Operational Creditor's letter dated 24.07.2018, it is clearly stated that "during discussions it was informed by Chairman of the Corporate Debtor that other agencies are demanding Rs. 45,00,000/- each for the replacement of Tube Plate, tube re-tubing and rectification and looking at the good relations of both the managements' SEDL is ready to rectify this without charging any additional cost subject to release of our outstanding payments". The Corporate Debtor had vide several letters made it clear that the payment was not made in view of no supply of the material agreed and to that effect, there exists a dispute between the parties.
- 6.3 On perusal of various communications, this Bench finds that there has been continuous complaints from the Corporate Debtor and continuous payment Follow-up from the Operational Creditor. This Bench finds it difficult to conclude whose default made whom suffer. Accordingly, this Bench finds that there seems to be a prima facie dispute on relation to the debt claimed in default.
- 6.4 It is trite law that an Application under Section 9 of the Code cannot be admitted in relation to disputed debt as held by the Hon'ble

Supreme Court in *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited*.

- 6.5 In view of the above, we find that the present case is fit for dismissal under Section 9(5)(ii)(d) read with Section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016 in view of pre-existing dispute between the parties with respect to the purported claims and counter-claims of both the parties, this matter requires adjudication which is beyond the powers vested in this Bench in proceedings arising from an application filed under sec. 9 of the code and deserves to be dismissed.

ORDER

This Application being C.P. (IB) No. 414/NCLT/MB/C-IV/2021 filed under Section 9 of I&B Code, 2016, filed by Spray Engineering Devices Limited, Operational Creditor/ Applicant against Swaraj Green Power and Fuel Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **Dismissed**.

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.

Sd/-

Prabhat Kumar
Member (Technical)
//LRA-Akshata Shah//

Sd/-

Kishore Vemulapalli
Member (Judicial)