

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

CP (IB) No.257/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

CONQUERENT CONTROL SYSTEMS
PRIVATE LIMITED

[CIN: U31903HR2006PTC036256]

...Operational Creditor

v/s.

ARTEMIS ELECTRICALS AND
PROJECTS LIMITED

[CIN: L51505MH2009PLC196683]

...Corporate Debtor

Order Delivered on: 28.06.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Operational Creditor:

None

For the Corporate Debtor:

Mr. Amir Arsiwala, 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) by Conquerent Control System Private Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Artemis Electricals Limited, the Corporate Debtor.
 - 1.1. The Company Petition is filed on 02/03/2021 claiming an amount of Rs. 1,46,63,054/- {including interest calculated at the rate of 12.75% from 10/10/2019} in default. The Part IV of Form 5 specify the date of default as 10.10.2019(i.e. date of first instance).
 - 1.2. The Operational Creditor submits that, the Corporate Debtor had approached the Operational Creditor for following works: a) Supply of Panel b) Supply of Transformers to be carried out at the Delhi Police Head Quarters at New Delhi, two purchase orders (POs) indicating the types, Quantities and agreed price vis-à-vis the works were issued by the Corporate Debtor to the Operational Creditor.
 - 1.3. However, from 10.10.2019 the default in payments had started, despite there being recurring default in payments on part of the Corporate Debtor, the Operational Creditor continued the works till 07.07.2020 (i.e. date of last service).
 - 1.4. When the Corporate Debtor failed to honor the payments for a long period without a reasonable reason warranting delays in payment, the Operational creditor started issuing reminders to recover its legitimate dues. consequently, the debt of the Operational Creditor remained unpaid.

- 1.5. Despite nonreceipt of payment, the Operational Creditor, continued to provide its services of repairs/maintenance and/or installations. It is well delineated from the Site Visit Reports dated 05.01.2020, 15.01.2020, 17.01.2020, 22.01.2020, 29.01.2020, 11.06.2020, 20.06.2020 and 07.07.2020 respectively.
- 1.6. On 22.11.2020, the Operational Creditor had issued a Demand Notice under Section 8 of the Code. The Corporate Debtor has not replied to the said demand notice.
- 1.7. The Operational Creditors further submits that, letters were written to "The DCP Land & Building, Delhi Police Headquarters, New Delhi, whereby the authority was intimated about unlawful withholding of receivables of the Operational Creditor by the Corporate Debtor.
2. The Corporate Debtor in its reply submits that, two Purchase Orders were issued dated 2.05.2019 and 10.07.2019 to the Operational Creditor for the Supply of Panel (LT+HVAC+HT) and Raising Mains along with the Supply of Transformers (hereinafter referred to a "works" for the convenience of this Hon'ble Tribunal) to be carried out at the Delhi Police Head Quarters at New Delhi
- 2.1. The Operational Creditor ensured that the delivery/commissioning of the works will have to be completed within 8-10 weeks from the approval of the drawings by the Corporate Debtor and a test certificate was to be provided along with the material. It is pertinent to note that, according to this Purchase Order all the material, which was to be dispatched by the Operational Creditor, was required to be inspected by the Corporate Debtor and their team before the delivery. Moreover, this Purchase order had expressly provided that any defective or damaged material, as pointed out by the Corporate Debtors Engineer, has to be rectified by the Operational

Creditor but the same never took place. The Operational Creditor, despite constant reminders from the Corporate Debtor, failed to execute the works in accordance with the Purchase Orders, and has provided defective material without any rectification to the same when the same was pointed out to the Applicant.

2.2. The Corporate Debtor states that, as part of the scope of work provided in the second Purchase order dated the 10th of July 2019; the Operational Creditor was to ensure that the delivery/commissioning of the works will have to be completed within 4-6 weeks from the approval of the drawings by the Corporate Debtor and a test certificate was to be provided along with the material. Moreover, this Purchase order had very expressly provided that any defective or damaged material as pointed out by the Corporate Debtor's Engineer has to be rectified by the Applicant, but the same never took place and inadvertently the Operational Creditor despite constant reminders from the Corporate Debtor failed to execute the works in accordance with the Purchase Orders and has provided defective material without any rectification to the same when the same was pointed out to the Applicant.

2.3. On the 18.08.2020, the Corporate Debtor wrote an email to the Operational Creditor, intimating them about the defects in the installation and commission of panels at the site, as in the work, which was completed by the Operational Creditor, there existed numerous cases of tripping on main panels and the Delhi police themselves, being the end user of this work, had time and again communicated the defect which was observed in these works, but still there was no response whatsoever which was received by the Corporate Debtor in lieu of the same.

- 2.4. Time and again, the Delhi Police, being the end user of the works, have complained about the quality of the works supplied by the Operational Creditor and the same was communicated to the Operational Creditor through several emails of the Corporate Debtor dated the 13.10.2020, 21.10.2020 and 22.10.2020, despite which the defects were never rectified by the Applicant. It is also pertinent to note that, the Operational Creditor who was to rectify and attend to these defects as pointed out by the Corporate Debtors has also time and again failed to attend or respond to the call of the Corporate Debtor's Engineer.
- 2.5. The Corporate Debtor again vide their email dated the 9.11.2020, informed the Operational Creditor about the requirement of their team at the site for carrying out work but this request of the Corporate Debtor was also ignored by the Operational Creditor and the same is also reflected in their email reply dated the 12.11. 2020.
- 2.6. Thereafter, on the 24.11.2020, the Corporate Debtors sent another email to the Operational Creditor, informing them of their failure to provide requisite and desirable support at the site, the defects observed in the works, and their non-cooperation as stipulated and agreed by the parties in the abovementioned Purchase Orders. Despite all the efforts taken by the Corporate Debtor to communicate to the Operational Creditor the need to rectify the defects in the works, the Operational Creditor have time and again chosen to ignore these requests made by the Corporate Debtors and have failed to depute their technician or team at the site, which has caused great embarrassment and loss of business and repute to the Corporate Debtor.

2.7. The Corporate Debtor further through their email dated the 13.03.2021 and 7.04.2021, informed the Operational Creditor of their non-cooperation. commissioning of all panels at site and the defects in the deliverables as agreed between the parties in the Purchase orders but these requests of the Corporate Debtor was again completely ignored by the Operational Creditor who voluntarily chose not to take any action in relation to the same.

Findings

3. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

3.1. This Bench is of considered view that the demand notice u/s 8 was issued on 20.11.2020. The Corporate Debtor has placed on a communication dated 17.08.2020 informing the Operational Creditor that “*There are numerous number of cases of tripping on main panels and Delhi police has taken the matter very seriously. Main panel connecting the DG is also defective and frequently giving trouble. The Authority has even challenged the quality of panels installed by you*”, and also pointed out non-compliance with various PO conditions the subsequent email correspondence further indicates that there have been complaints about poor service and delivery on the part of Operational Creditor. This bench further notices that the delivery terms contemplated completion within 8-10 weeks from approval of drawings, however, email dated 18.08.2020 indicates that the delivery had not taken place completely.

3.2. The Operational Creditor has not filed any rebuttal to the communication placed on record by the Corporate Debtor. On perusal of the petition this

bench finds that the Operational Creditor has annexed 2 letters written to Delhi Police, which was the principal party, to seek their indulgence for the outstanding amount. The Counsel for the petitioner was not present on 12.04.2023 and 09.06.2023, when the matter was reserved for hearing the Counsel for Corporate Debtor.

3.3. In view of aforesaid findings, this bench has no hesitation to conclude that there appears to be a dispute pertaining to delivery of goods as well as services connected thereto, and the communication pertaining to such dispute dates prior to issuance of demand notice.

3.4. 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* held that, in the event there is a pre-existing dispute between the parties, an Application under Section 9 of the Code would have to be rejected.

3.5. 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, which 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

4. The petition bearing C.P. (IB) No. 257/MB/C-IV/2021 filed by Conquerent Control System Private Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Artemis Electricals Limited, the Corporate Debtor is **dismissed**.

5. 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/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
28.06.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)