

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

**CP (IB) No.846/MB-V/2021**

Under Section 9 of the I&B Code, 2016

In the matter of:

**Biltech Building Elements Limited**

[CIN: U72900HR2001PLC083905]

...Operational Creditor/Applicant

V/s

**Citadel Eco-Build Private Limited**

[CIN: U45209PN2008PTC131646]

...Corporate Debtor/Respondent

**Order Dated: 07.08.2023**

*Coram:*

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Aarsheya Sharda, Advocate.

For the Respondent(s) : Mr. Avinash Khanolkar, Advocate.

**ORDER**

*Per: Anuradha Bhatia, Member (Technical)*

1. This is an application bearing C.P. (IB) No. 846/MB-V/2021 filed by **Biltech Building Elements Limited**, the Operational Creditor/Applicant, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter "**Code**") seeking initiation of Corporate Insolvency Resolution Process (hereinafter "**CIRP**") against **Citadel**

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**Eco-Build Private Limited**, Corporate Debtor claiming total outstanding amount of Rs.1,67,30,539/- (Rupees one crore sixty-seven lakh thirty thousand five hundred thirty-nine only) as on 01.07.2021.

2. The Date of Default is not clearly mentioned in Part-IV of the Petition. However, the Operational Creditor submitted in Part-IV of the Petition that, the date 11.06.2019 is taken to be the defining date of the default as it was the first time when the Corporate Debtor defaulted against the payment due and continued doing so till 06.01.2020. The Petition is filed on 16.07.2021.

**CASE OF THE OPERATIONAL CREDITOR:**

3. The case of the Operational Creditor is that:
  - 3.1 The Operational Creditor is a Public Limited Company and is one of the largest manufacturers of Autoclaved Aerated Concrete Blocks in India.
  - 3.2 The Corporate Debtor has executed a Sales Distributor Agreement dated 21.03.2018 with the Corporate Debtor, for the purpose of identifying the Corporate Debtor as the Distributor of Autoclaved Aerated Concrete Blocks and Mortar, which were being manufactured by the Operational Creditor. As per the Agreement, the Corporate Debtor would place the Purchase Orders upon the Operational Creditor from time to time, for the material required by them, in furtherance to which the Operational Creditor shall make the supply.
  - 3.3 The Operational Creditor submits that, the Corporate Debtor continued to place upon the Operational Creditor various purchase orders for the supply of Goods of different specifications

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from May 2019 till October 2020. These Purchase Orders were placed by way of formal Purchase Orders as well as verbally through phone calls and mails. Pursuant to the said Purchase Orders, the Operational Creditor fulfilled its obligations and successfully delivered the goods to the Corporate Debtor and subsequently raised various invoices.

- 3.4 The Operational Creditor issued invoices on mentioned purchase orders upon the Corporate Debtor on successful delivery of goods. As per the meeting held on 27.12.2019, the credit period of 21 days was revised to 35 days with effect from 01.01.2020 and hence, the other invoices raised from 01.01.2020 till 06.01.2020 reflect the payment terms of 35 days. The Corporate Debtor while accepting the delivery of goods without any dispute and further making use of it for its business arrangements and profits have completely failed to release the payment against a total of 365 invoices starting from 21.05.2019 to 06.01.2020, amounting to Rs.1,67,30,539/-.
- 3.5 The Operational Creditor submits that despite repeated reminders and requests to release payments against the outstanding invoices for duly availing the services of the Operational Creditor, without any impediments relating to either invoices or the quality of services, the said request was not complied with.
- 3.6 The Operational Creditor further submits that the Operational Creditor had supplied the goods to the Corporate Debtor till October 2020, even during the pandemic despite receiving no payments from the Corporate Debtor, in the interest of long-lasting business relationship. The Corporate Debtor had admitted its liability in a series of communication exchanged between

Corporate Debtor and Operational Creditor. However, the Corporate Debtor has failed to release the pending due amount.

- 3.7 The Operational Creditor issued a Demand Notice dated 16.03.2021, in Form 3, upon the Corporate Debtor claiming total outstanding of Rs.2,22,15,681/- as on 16.03.2021, to be paid within 10 days from the date of receipt of the said Notice. The Counsel for the Operational Creditor submits that the Corporate Debtor failed to make the payments within 10 days, from the date of Demand Notice and also failed to reply to the said Notice.
- 3.8 The Operational Creditor further submits that the Corporate Debtor has failed to make payment against the invoices, within the period prescribed in the Invoices i.e. 21 days, (from 21.05.2019 to 32.12.2019) and 35 days (from 01.01.2020 to 06.01.2020). Hence, the Operational Creditor has filed this present Petition against the Corporate Debtor claiming the amount in 365 invoices, as “due” and “payable” to the Operational Creditor.
4. The Operational Creditor had issued another Demand Notice in Form 3 dated 01.07.2021, upon the Corporate Debtor for claiming total outstanding amount of Rs.1,67,30,539/-, payable within 10 days from the date of receipt of the said Demand Notice.

**REPLY OF THE CORPORATE DEBTOR:**

5. The Corporate Debtor has filed its Affidavit in Reply dated 10.04.2023 and submits as under:

**A. Different Dates of Default:**

- 5.1 In the present Petition, neither in Part-IV of the Petition nor anywhere else, the Petitioner has given a specific date of default on which the alleged default has occurred. The Operational Creditor has merely mentioned that the said amount was payable from 11.06.2019.
- 5.2 In this present Petition, there are different work orders which had been issued by the Corporate Debtor to the Operational Creditor and on the basis of the same, the Operational Creditor made supplies to the Corporate Debtor. The Corporate Debtor further submits that the different claims arising out of different work order, having different amounts and different dates of defaults cannot be clubbed together in on Petition.

**B. Existence of Dispute:**

- 5.3 The Corporate Debtor submits that, the Operational Creditor had supplied goods, in the nature of Autoclaved Aerated Concrete Blocks to the Corporate Debtor and thereafter raised invoices upon the Corporate Debtor. The parties had executed a Sales Distributor Agreement, dated 21.03.2018 and as per the Agreement, the Corporate Debtor would place the purchase order upon the Operational Creditor from time to time. Both the parties mutually agreed on 27.12.2019 to continue the arrangement of supply and distribution of goods. The credit period was enhanced from 21 days to 35 days.
- 5.4 The Operational Creditor stopped supplying goods to the Corporate Debtor and their clients during the Covid-19 pandemic due to which the Corporate Debtor suffered a huge loss in the business. The Corporate Debtor raised complaints about the

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goods supplied to the Corporate Debtor by the Operational Creditor from time to time.

- 5.5 There are various emails sent by the Corporate Debtor to the Operational Creditor with regards to the damaged and broken blocks. The first communication in this regard is dated 07.08.2019, wherein the Corporate Debtor informed the Operational Creditor about the rejection of goods by the clients of the Corporate Debtor. However, the Operational Creditor has neither taken any steps for the replacement of the said goods nor compensated the Corporate Debtor with amounts of rejected goods till date.
- 5.6 The Corporate Debtor submits that on various occasions, clients of the Corporate Debtor complained about the unworthy products. As per the business structure of the Corporate Debtor; the Corporate Debtor was receiving the items from the Operational Creditor and supplying the same to its clients. However, there were several occasions when the clients of the Corporate Debtor rejected the blocks supplied by the Corporate Debtor, which caused financial loss to the Corporate Debtor. The defects in the items was brought to the notice of the Operational Creditor. However, the Operational Creditor did not take any positive steps to resolve the disputes.
- 5.7 The Corporate Debtor submits that, as the defects were not removed by the Operational Creditor, the Corporate Debtor raised a Debit Note vide its E-mail dated 09.05.2020, addressed to the Operational Creditor, for the work carried out by the Corporate Debtor from time to time. Thus, the Petition is not maintainable

in the eyes of law as there existed a dispute with respect to the substandard items.

**C. Two Demand Notices:**

5.8 The Corporate Debtor submits that the Operational Creditor had issued two Demand Notices dated 16.03.2021 and 01.07.2021. The amount claimed in both the Demand Notices are different and hence it is not clear that on which Demand Notice the Operational Creditor has filed the Petition.

**D. Attempt for Recovery:**

5.9 The Corporate Debtor submits that during the pendency of the present Petition, the Operational Creditor issued one Legal Notice dated 23.01.2023 to the Corporate Debtor, seeking recovery of the claimed amount. This fact clearly shows the intention of the Operational Creditor that the Operational Creditor is merely interested in recovery of its dues and not in the Insolvency Resolution of the Corporate Debtor. The Corporate Debtor had replied to the said notice. Hence, the Petition is clearly hit by the provisions of Section 65 (1) of the Code and is, liable to be dismissed.

5.10 The Corporate Debtor further submits that the Operational Creditor had issued an Email dated 11.06.2020 for Reconciliation for accounts of the Corporate Debtor. The Corporate Debtor contended that when there is an issue of reconciliation of accounts between the parties, then it can be construed that there is pre-existing of dispute between the parties and therefore the Petition is liable to be dismissed.

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- 5.11 In the present case the Operational Creditor itself called the Corporate Debtor for the reconciliation of accounts and therefore it is clear that there is pre-existing dispute between the parties. Since there is communication of reconciliation of accounts, this present case is squarely covered by the Hon'ble NCLAT's decision and therefore the present Petition is liable to be rejected.
- 5.12 The Corporate Debtor submits that the copies of Ledger Account/debit notes of the Operational Creditor in the books of the Corporate Debtor clearly shows that there are counter claims against each other between the parties. And the Learned Counsel prayed that, this Petition does not survive and liable to be dismissed.

***Findings/Observations:***

6. We have heard the arguments of the Learned Counsel for Operational Creditor and have gone through the Reply and Written Submissions filed by the Corporate Debtor and perused the records.
- 6.1 The Operational Creditor and Corporate Debtor entered into a Sales Distributor Agreement dated 21.03.2018, for the purpose of identifying the Corporate Debtor as the Distributor of Autoclaved Aerated Concrete Blocks and Mortar, which were being manufactured by the Operational Creditor
- 6.2 As per the Sales Distributor Agreement dated 21.03.2018, the Operational Creditor was to supply the material to the Corporate Debtor, to sell the material by the Corporate Debtor to the clients of the Corporate Debtor. The Relevant Clause of the said Agreement is as under:

*“2. The Company hereby appoints “Distributor” for the products to sell all the produce of “AAC-Blocks and Mortar” from Manufacturing facility situated at 105, Mile Stone, Pune-Solapur Highway, Village Bhadalwadi-Paundhwadi, Taluka – Indapur, Near Bhigwan, Dist. Pune, Maharashtra (hereinafter referred to as the ‘Bhigwan Plant’)*

*3. The company hereby agrees to produce around 1,20,000 Cubic Meters, of AAA-Blocks and 6,000 MT. of “AAC Blocks-Broken” evenly spread out in the whole year and Distributor hereby commits to lift the entire quantity in even manner during the tenure of this agreement.”*

6.3 As per the submissions of the Learned Counsel of the Operational Creditor, the Operational Creditor had supplied the material to the Corporate Debtor for period from May 2019 till October 2020, for which the Operational Creditor had raised invoices upon the Corporate Debtor. The Learned Counsel for the Operational Creditor further submitted that, in the meeting held on 27.12.2019, the credit period of 21 days was revised to 35 days with effect from 01.01.2020 and hence, the other invoices raised from 01.01.2020 till 06.01.2020 reflect the payment terms of 35 days.

6.4 The Learned Counsel for the Corporate Debtor submitted that, the blocks supplied by the Operational Creditor were damaged and broken and hence the same were rejected by the clients of the Corporate Debtor. This fact was informed by the Corporate Debtor through various correspondences to the Operational Creditor. Therefore, according to the Counsel for the Corporate Debtor, there has been a pre-existing dispute between the parties

as the products supplied by the Operational Creditor were defective in nature and the defects were neither rectified nor the goods were replaced and, on this ground alone, the Petition deserves to be dismissed.

6.5 On the other hand, the Counsel for the Operational Creditor has argued that there has been no pre-existing dispute between the parties and the Corporate Debtor is taking a moonshine defence in order to defeat the Petition and, therefore, the present Petition deserves to be admitted.

6.6 From the material available on record, it is observed by the Bench that, vide Email dated 07.08.2019, the Corporate Debtor informed the Operational Creditor about the rejection of goods by the clients of the Corporate Debtor. Further, the Corporate Debtor vide its Email dated 27.08.2019, had informed the Operational Creditor that the material sent by the Operational Creditor under Invoice No. 1458 dated 10.08.2019 has been rejected by the client of the Corporate Debtor for the reason compressive strength less than 2 N/mm. The relevant extract of the Email dated 07.08.2019 and 27.08.2019 is as under:

----- Forwarded message -----  
From: Citadel Eco- Build Pvt Ltd <info@citadelgr.com>  
Date: Wed, Aug 7, 2019 at 4:51 PM  
Subject: Rejected Material of size 300 mm  
To: Mr Dnyandeo Kadam <dnyandeo.kadam@biltechindia.com>  
CC: SS SHITOLE <ss.shitole@biltechindia.com>, Narendra Arya <nkarya@biltechindia.com>, Amol S Shitole <amol\_shitole@citadelgr.com>, Pratik babar <pratikaac@gmail.com>, Ganesh Adhav <ganashaac32@gmail.com>

Dear Sir,

As per the below trial email, we have requested the client to use AAC blocks of 300 mm size but they are not willing to use.

3/30/23, 2:14 PM

Gmail - FW: Rejected Material of size 300 mm

This is to inform you that they are arranging the transportation for lifting rejected blocks tomorrow.

Kindly accept the truckload and our purchase debit note.

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Regards,

Ganesh Adhav

Sr Sales Executive

----- Forwarded message -----

From: Citadel Eco- Build Pvt Ltd <info@citadelgr.com>

Date: Tue, Aug 27, 2019 at 10:33 AM

Subject: Material Rejection

To: Narendra Arya <nkarya@biltechindia.com>, Mr Dnyandeo Kadam <dnyandeo.kadam@biltechindia.com>

CC: Amol S Shitole <amol\_shitole@citadelgr.com>, Pratik babar <pratikaac@gmail.com>, Jaisingh Kadambande <jakaac@gmail.com>

Dear Sir,

This is to inform you that the material of AAC Blocks (Invoice no: 1458 dated 10.08.2019, Size 200 x 250 x 625 mm (8"), QTY 1170 nos, 36.5620 Cu.m) has been rejected by the client for the reason compressive strength less than 2 N/mm<sup>2</sup>. Kindly note that this is happening often.

Another issue is in Thin Dry Mortar bags client has found stones we have attached the image of the same.

<https://mail.google.com/mail/u/0/?ik=8fc1f21f8e&view=pt&search=all&permthid=thread-f:1749113626520176785&simpl=msg-f:174911362652017...> 1/3

3/30/23, 2:14 PM

Gmail - FW: Material Rejection

Please see this matter very seriously.

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Regards,

Malvika

Sales Coordinator

6.7 It is observed by this Bench that, all the correspondence by the Corporate Debtor were sent prior to issuance of the Demand Notices dated 16.03.2021 and 01.07.2021. Hence, there did exist

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a Dispute between the parties. Further, as the Operational Creditor did not rectify the defects in the goods, the Corporate Debtor issued a Debit Notes upon the Operational Creditor vide its E-mail dated 09.05.2020. The Email dated 09.05.2020 is annexed as Annexure “4” to the Reply of the Corporate Debtor.

6.8 The Learned Counsel for the Operational Creditor further contended in its Written Submissions dated 25.05.2023 that all the Purchase Orders issued by the Corporate Debtor were part of the Sales Distributor Agreement dated 21.03.2018. It is further observed by this Bench that, the term of the Sales Distributor Agreement dated 21.03.2018 was mentioned to be one year as per clause 18 of the Agreement. The said Clause 18 is as under:

*“18. Term – This Agreement shall come in to effect on 01.03.2018 and shall continue to be effective for a period of 1 (One) year unless terminated earlier as provided herein in clause 24.”*

6.9 After perusal of the Clause 18 of the Sales Distributor Agreement dated 21.03.2018, this Bench is not inclined to accept the above-mentioned contention of the Operational Creditor as the Sales Distributor Agreement dated 21.03.2018 expired on 28.02.2019. Therefore, it cannot be said that all the invoices are covered under the Sales Distributor Agreement dated 21.03.2018.

6.10 It is further observed by this Bench that, the Operational Creditor had issued a Reconciliation Email dated 11.06.2020 to the Corporate Debtor for reconciliation of accounts of the Corporate Debtor. From the perusal of the above Email dated 11.06.2020, this Bench is of the considered view that there was a dispute in existence between the Operational Creditor and Corporate

Debtor regarding the payment of the dues prior to the issuance of the Demand Notice by the Operational Creditor. The relevant extract of the Email dated 11.06.2020 is as under:

7/13/2021 Mail - Ankit Tripathi - Outlook

**Re: Reconciliation of Citadel Accounts**

Narender Kumar Arya <nkarya@biltechindia.com>  
Thu 11/26/2020 9:26 AM

To: Pratik Babar <pratikaac@gmail.com>; mahendra deore <mahendra.deore@biltechindia.com>  
Cc: Rajat Bahl <rajat.bahl@bilt.com>; amolshivajishitole@gmail.com <amolshivajishitole@gmail.com>; Mr Paramjeet Singh <paramjeet.singh@biltechindia.com>

Dear Pratik

Please refer the trailing email. Your ledger is still awaited !

We have scheduled the reconciliation meeting at your office tomorrow. I trust there is no change in that.

Narender Arya

On 24-Nov-2020, at 4:43 PM, Narender Kumar Arya <nkarya@biltechindia.com> wrote:

Dear Mahendra

Please make sure you call Citadel (Mr. Pratik) on Thursday evening to confirm the meeting for Friday morning in Citadel Office-Pune.

The agenda of your visit will be "Complete reconciliation of Citadel Accounts".

**Pratik:** As discussed you will share your ledger to Mahendra so that he can come well prepared. Please share your ledger immediately.

Narender Arya

On 24-Nov-2020, at 4:14 PM, Narender Kumar Arya <nkarya@biltechindia.com> wrote:

Dear Pratik

Please find attached herewith our ledger.

**Also confirm when you want me to send my account guy to sit & reconcile ?**

By the time we reconcile, try and release the part payment of current overdues of ~~RS-12 lacs~~ ~~RS-12 lacs~~

6.11 Thus, reference can be given to the order of Hon'ble NCLAT, in the matter of *East India Udyog Ltd. V. SPML Infra Limited, Company Appeal (AT) (Insolvency) 256 of 2023 dated 23.03.2023*, wherein the Hon'ble NCLAT held that, when there is an issue of reconciliation of accounts between the parties, then it can be construed that there is pre-existing of dispute between the parties and therefore the Petition is liable to be dismissed.

- 6.12 Having thoughtfully considered the rival contentions of the Counsel for the Parties, we are of the considered view that the Demand Notice on Form-3 in this case was issued on 16.03.2021 and 01.07.2021 whereas the above referred correspondence pointed out by the Counsel for the Corporate Debtor was exchanged between the parties much prior to the demand notice. Minute perusal of the correspondence clearly reveals that there were serious issues with regard to the Blocks supplied and there were major defects as the Blocks supplied by the Operational Creditor were not as per the requirement of the Corporate Debtor.
- 6.13 The Hon'ble Supreme Court in *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, Civil Appeal No. 9405 of 2017 dated 21.09.2017*, held that what the Adjudicating Authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.
- 6.14 Therefore, applying the above analogy laid down by the Hon'ble Supreme Court to the present case on hand, this Bench has no option except to hold that there are "pre-existing disputes" between the parties and there is no merit in the above Company

Petition and the above Company Petition deserves to be '**dismissed**' on that score alone.

6.15 Accordingly, the Petition being CP No.846 of 2021, filed under Section 9 of the Code is hereby **dismissed**.

Sd/-

**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**