

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
COURT - II**

**COMPANY APPLICATION No. CP (IB) 12/NCLT/AHM/2021**

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

**In the Matter of:**

**Tirupati Starch & Chemicals Ltd.**

**Applicant/  
Operational Creditor**

**Versus**

**Industrial Enviro & Engineering  
Services private Limited**

**Respondent/  
Corporate Debtor**

**Order Pronounced on: 25/04/2022**

**Coram:**

**Dr. Deepti Mukesh, Hon'ble Member(Judicial)  
Ajai Das Mehrotra, Hon'ble Member (Technical)**

**MEMO OF PARTIES**

**Tirupati Starch & Chemicals Limited**

Shree Ram Chambers

12, Agrawal Nagar, Main Road

Indore 452 001 (M.P.)

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**Applicant/Operational Creditor**

**Versus**

**Industrial Enviro & Engg. Services Pvt. Limited**

A/4, Punjan Complex

Near Pratap Nagar Over Bridge

Opp. ONGC, Makarpura Road

Vadodara 390 004

Gujarat State

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**Respondent/Corporate Debtor**

**Appearance:**

For Applicant : Mr. Pratik Tripathi, PCS

For the Respondent : Mr. Vivek Shah, Advocate

**ORDER**

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') on 11.01.2021 by Mr. Ramdas Goyal, Director of **M/s. Tirupati Starch & Chemicals Limited** (for brevity 'Applicant') authorised vide Board Resolution dated 30.09.2020, with a prayer to initiate the Corporate Insolvency process against **Industrial Enviro & Engineering Services Private Limited** (for brevity 'Corporate Debtor').

2. The Applicant operational creditor a limited company incorporated under the provisions of Companies Act, 1956 on 09.12.1985, duly registered with the Registrar of Companies, Gwalior having registered office at Indore, Madhya Pradesh is engaged in the business of manufacturing, producing, processing, extracting, refining, buying, selling, importing of maize starch, dextrin, dextrose etc.
  
3. The corporate debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 26.10.1999, duly registered with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U29199GJ1999PTC036787 and having registered office at Vadodara, Gujarat State. Authorised share capital of the corporate debtor is Rs. 10,00,000/- and paid up share capital of the company is Rs. 1,00,000/-. The corporate debtor company is engaged in manufacturing of R.O. Antiscalant, Flocculants, poly electrolyte, water treatment accessories etc.
  
4. It is submitted that the applicant had placed an order dated 26.05.2018 for the supply and installation of Waste Water Recycle System having capacity of 800 m<sup>3</sup>/day. The corporate debtor was required to execute and complete the work of installation by 17.09.2018 in accordance with the purchase order

read with the quotation dated 26.05.2018 of the corporate debtor. As per the purchase order 26.05.2018 and quotation dated 26.05.2018, the complete water recycle plant was agreed to be installed along with other required materials and maintenance services at a price of Rs. 1,77,00,000/- inclusive of taxes. The corporate debtor had supplied and installed, under-capacity plant and instruments and the same are not giving results as per the desired parameters prescribed in the purchase order and quotation.

5. It is submitted by the applicant that as per the purchase order and quotation, 10% advance was required to be paid to the corporate debtor along with the purchase order and the applicant had paid 10% advance on 29.05.2018 and 80% of the total amount was required to be paid on presentation of proforma invoice by the corporate debtor. The applicant made the payments timely but the corporate debtor failed to provide the services as per the purchase order and quotation thereof.
6. It is further submitted by the applicant that in spite of several emails, letters, WhatsApp messages and telephonic communications, the corporate debtor failed to rectify the defects in the plant when an amount of Rs. 1,68,20,000/- has already been paid to corporate debtor. The applicant sent emails

dated 30.11.2019, 07.12.2019, 16.12.2019 and 23.12.2019 regarding performance of the plant and to send some technical persons for resolving the issues faced while operating the plant. The applicant vide email dated 26.05.2020 reminded the corporate debtor regarding the persistent issues in the under capacity plant but the corporate debtor did not provide any services. The applicant sent reminder dated 25.06.2020 requesting the corporate debtor to resolve the issue latest by 31.07.2020. The applicant again sent a letter dated 05.10.2020 for cancellation of purchase order dated 26.05.2018.

7. The applicant issued demand notice in Form 3 dated 04.12.2020 under the provisions of the IB Code which was duly delivered on 07.12.2020 as per track consignment report filed by the applicant at the address as per master data. Corporate debtor has not replied to the demand notice dated 04.12.2020, neither made any payment of outstanding dues of the applicant.
8. The applicant filed application under Section 9 of the IB Code. As per part IV form 5 an amount of Rs. 2,05,55,728/- (Rupees two crores five lacs fifty-five thousand seven hundred twenty-eight only) out of which Rs. 1,65,20,000/- (Rupees one crore sixty-five lacs and twenty thousand only) is the unpaid principal amount and Rs. 40,35,728/- (Rupees forty lacs thirty-five

thousand seven hundred and twenty-eight only) is interest amount which has been calculated @ 12% per annum due and payable to the applicant by the corporate debtor.

9. Corporate Debtor filed affidavit in reply inter alia stating
- that, in fact the applicant company is in default of payment of Rs. 9,05,650/- to the respondent company arising out of the same transaction under challenge;
  - that, as per the terms of the quotation dated 26.05.2018 it was set forth in Annexure-4 whereby the work to be performed by the applicant company were clearly mentioned. It was set forth in clause X of Annexure – 5 whereby the warranty period of equipment manufactured and supplied by the respondent company was for a period of 12 months from the date of commissioning and 18 months from the date of supply of major equipment whichever was earlier. For the bought out equipment and components, the respondent company was not liable for any warranty.
  - that, the applicant company did not achieve the parameters of COD i.e. 200 mg/ltr as prescribed in the quotation as the applicant company neither deployed skilled trainees at their end nor allowed our engineer to stay at their site due to their internal problems and had also failed to achieve the parameters of COD;
  - there is existence of disputes between the parties prior to issuance of demand notice;
  - engineers of the respondent company were not allowed to continue the operation of the plant by the applicant company due to internal problems and failure of the applicant company to achieve the parameters of COD;

- the respondent is a profit making company with bright prospects and also has various projects in hand and it is a solvent company.

10. The applicant filed rejoinder stating that:

- Notice has been served upon the corporate debtor by speed post on 04.01.2021 and through email on 02.01.2021. The applicant filed track consignment report evidencing that the notice has been served upon the corporate debtor on 12.01.2021. The applicant filed additional rejoinder inter alia stating that as per para VII of quotation dated 26.05.2018 the corporate debtor was required to deliver, supply, install, commission the plant within 12 to 15 week from the date of purchase order along with advance and accordingly the project was to be completed latest by 09.09.2018;
- the plant supplied by the corporate debtor is of under capacity and there was pendency in supply of some instruments and installation and commissioning thereof, due to which plant was of no use to the applicant as it has failed to generate desired results, which was brought to the knowledge of the corporate debtor; several times.
- no dispute is raised by the corporate debtor with regard to cancellation of purchase order dated 26.05.2018 and demand of payment of amount given with interest;
- after cancellation of purchase order vide letter dated 05.10.2020 no grievance was raised by the corporate debtor at any time and there was no response to email dated 05.10.2020 of cancellation of purchase order which clearly suggests that corporate debtor admitted cancellation;

- even after issuance of demand notice dated 04.12.2020 no dispute was raised by the corporate debtor which fairly conclude the admission of cancellation;
- pursuant to cancellation of purchase order dated 26.05.2018 which was communicated to the corporate debtor vide letter dated 05.10.2020, the entire amount given by the applicant has become due and payable.

11. The corporate debtor filed written submissions stating that:

- the applicant is till date enjoying the goods which is supplied by the corporate debtor as per the purchase order;
- the applicant has no cause of action and locus standi to file the present application. The corporate debtor has received part-payment of outstanding amounts qua the goods supplied;
- the email communications and correspondences between the applicant and corporate debtor much prior to receipt of demand notice qua the quality of goods supplied and service, substantiates that there exists a genuine dispute between the parties;
- on 23.12.2019 the corporate debtor requested the applicant to release the pending payments and warned them to maintain the quality of goods supplied as their business was closed for many months;
- the applicant has alleged that the debt fell due on 09.09.2018, however, on 29.01.2020, the corporate debtor had received part payment of Rs. 3.00 lacs towards outstanding dues from the applicant qua the bills which clearly shows that the entire claim of the applicant is vitiated.

12. The applicant submitted written submissions stating that:
- the corporate debtor was required to execute and complete the work of installation by 17.09.2018 to the satisfaction of the applicant as per quotation dated 26.05.2018;
  - as per purchase order, complete Waste Water Recycle Plant was to be installed at a price of Rs.1,77,00,000/- inclusive of taxes, the corporate debtor has supplied and installed under capacity plant and instruments;
  - that the applicant had given advance of Rs. 15,00,000/- on 29.05.2018, however, the corporate debtor failed to fulfill the terms of said purchase order;
  - on violation of purchase order and discrepancies in supply and services, the purchase order was cancelled vide email dated 05.10.2020 and demand notice dated 04.12.2020 was issued.
  - Provisions of Section 9 (3) (b) of the IB Code, 2016 has been complied with and affidavit has been filed as required u/s 9 (3) (b) of the IB Code, 2016. Also letter from the bank of applicant evidencing non-payment of operational debt under Section 9 (3) (c) of the IB Code, 2016 has also been filed.
13. The registered office of the corporate debtor is situated in Vadodara, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
14. As per part IV, form 5 date of default is 10.09.2018 and the application is filed on 11.01.2021. Therefore, the application is not barred by limitation.

15. Heard submissions and perused the documents on record. On perusal of the records it is found that as per the terms and conditions of purchase order dated 26.05.2018 issued by the applicant, the corporate debtor had delivered Waste Water Recycling Plant (800 m<sup>3</sup>/day) at the site of the applicant vide different delivery challan/packing slip during the period from 08.08.2018 to 16.12.2018 and the applicant has made total payment of Rs. 1,68,20,000/- to the corporate debtor. The corporate debtor has furnished copies of email/WhatsApp communications and correspondences between the corporate debtor and applicant, during the period between 23.12.2019 and 22.03.2020, much prior to the receipt of demand notice which substantiates that there exists a genuine dispute between the parties. Relevant portion of one such email dated 23.12.2019 forwarded by the corporate debtor is reproduced here below:

*"For the commissioning of your RO plant and sir when your team did not allow to stay our engineer at your site due to the company personal reason, we requested your technical team to keep the plant in operation but a so long shut down of plant you are asking us to commission the plant and also you have hold of Rs. 11.00 lacs. We did not delay to send our engineer at your site but it is subjected to releasing our payments. Please release our at least 7.5 to 8.00 lacs our engineer will at your site. Sir, your technical teams knew that it is waste water recycling RO plant and need proper care every day still they did not operate the plant then how can anybody can maintain quality of this plant after its shut down of months." (sic)*

Email dated 12.01.2019 sent by the corporate debtor reads as under:

*"As per our todays discussion, we are ready to commission the plant but you need to maintain the feed water quality as per the attached data sheet at the time of proposal dated 26.05.2018.*

*If we will feed the higher BOD/COD or high turbidity water UF as well as RO membranes will damage quickly.*

*So please improve the treated effluent quality or allow us to run the plant at higher parameters but life of membranes will be in your risk."*

16. Though the applicant has claimed to have sent emails dated 30.11.2019, 07.12.2019, 16.12.2019 and 23.12.2019 regarding performance of the plant and to send some technical persons for resolving the issues faced while operating the plant, the applicant has failed to bring on record copy of such documents in support of its claim. Prior to issuance of demand notice dated 04.12.2020, the applicant has sent email dated 05.10.2020 regarding cancellation of the purchase order and asked to refund the amount paid to corporate debtor.
17. As discussed above it clearly reflects that, as per the purchase order, the applicant had delivered and commissioned the machinery at the site of the corporate debtor as per the schedule and had redressed all the technical service issues faced by the corporate debtor, even after successful commissioning of the RO Plant. The corporate debtor has brought on record documents to

substantiate its arguments that before issuance of demand notice dated 04.12.2020, there were genuine disputes with regard to operation of the plant supplied by the corporate debtor. We are supported by the judgement of the Hon'ble Supreme Court in the matter of "Mobilox Innovative Private Limited vz. Kirusa Software Private Limited" that in case of genuine dispute raised by the corporate debtor, the application cannot be admitted. The relevant portion of the judgement of the Hon'ble Supreme Court in the matter of "Mobilox Innovative Private Limited vz. Kirusa Software Private Limited" is reproduced below:

*"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under Section 9 (5) (2) (d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the 'existence' of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that 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.*

18. Under the facts and circumstances and as discussed above, we are of the considered view that the instant application deserves

to be dismissed. In the result, the instant application stands dismissed and disposed of without cost.

**Sd/-**

**Ajai Das Mehrotra  
Member (Technical)**

**Sd/-**

**Dr. Deepti Mukesh  
Member (Judicial)**

**Nair/Rahul**