IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

IBA/365/2020

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. S. Periyapalayem Common Effluent Treatment Plant Private Limited***

Tamilnadu Water Investment Company Limited
Reg. Off:-
'Polyhose Towers'
First Floor, No.86, Mount Road
Guindy, Chennai – 600032 ... *Operational Creditor*

-Vs-

M/s. S. Periyapalayem Common Effluent Treatment Plant Pvt. Ltd.
Reg. Off:-
S.F. No.224, Puzhakattu Thottam
A.Periyapalayem, Uthukuli Road
Tirupur – 641607 ... *Corporate Debtor*

Order Pronounced on 29th March 2022

CORAM:
Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : S. Raghunathan, R. Sahana, Sharanya Vaidyanathan, Advocates
For Corporate Debtor : M/s Genicon & Associates

ORDER

***Per:* Justice (Retd.) S.RAMATHILAGAM, MEMBER (JUDICIAL)**

Under Consideration is an application filed by **M/s. Tamil Nadu Water Investment Company Limited** (hereinafter referred to as *"Operational Creditor"*) against **M/s. S. Periyapalayem Common Effluent Treatment Plant Private Limited** (hereinafter referred to as *"Corporate Debtor"*) under

Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. A perusal of Part I of the Application shows that the Petitioner is a Public Limited Company. In relation to the Corporate Debtor, the particulars of the Corporate Debtor are given in Part – II from which it is seen that the date of incorporation of the Corporate Debtor is given as 20.05.2005 and the Nominal Share Capital of the Company is Rs.3,00,00,000/- and Paid-up Capital is Rs.3,00,00,000/-. The Registered office of the Corporate Debtor as per the Application is stated to be situated at SF No.224, Puzhakattu Thottam, A. Periyapalayem, Uthukuli Road, Tirupur, Tamil Nadu – 641 607.

3. In relation to Part III of the Application it discloses that the Operational Creditor has not proposed any "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the IRP. Part IV details the transaction between the Operational Creditor and the Corporate Debtor leading to the debt and default and the amount which is being claimed is Rs.97,58,856/-, which includes a sum of Rs.82,63,491/- towards

principal and Rs.14,95,365/- towards interest at the rate of 16.2% p.a. The date of default is mentioned as 31.07.2018.

4. Part V in the prescribed Application discloses the documents based on which the claim is sought to be substantiated by the Operational Creditor as against the Corporate Debtor and the Operational Creditor has attached the following documents;

   a. Project Management Agency Services (PMA) Agreement between Operational Creditor and the Corporate Debtor dated 22.08.2012.

   b. Operation and Supervision, Maintenance and Repair Agreement (Collectively referred as O&M Agreements) between Operational Creditor and the Corporate Debtor dated 23.08.2013.

   c. Operational Creditor's invoices dated 31.07.2018, 31.08.2018, 30.09.2018, 31.10.2018, 30.11.2018, 31.12.2018, 31.01.2019, 28.02.2019, 31.03.2019, 30.04.2019, 31.05.2019 towards O&M Services and 07.12.2018 towards PMA services.

   d. Operational Creditor's various reminder letters sent to the Corporate Debtor.

   e. Demand Notice issued by the Operational Creditor issued on 10.01.2020.

5. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor approached the Operational Creditor to implement a technology to operate and to achieve Zero Liquid Discharge (ZLD).

6. In pursuance of the same, both the parties entered into a Project Management Agency Agreement (hereinafter referred to as "*PMA*") dated 22.08.2012. The fee payable to the Operational Creditor was

set out in Clause 8.1 of the PMA Agreement. Thereafter, the Corporate Debtor requested the Operational Creditor to take over Operation and Maintenance of its Common Effluent Treatment Plant (CETP) and had pursuant thereto both the parties entered into an Operation and Supervision, Maintenance and Repair Agreement (Collectively referred as O&M Agreements) on 23.08.2013. As per Clause 12 of the O&M Agreements it is submitted that the Operational Creditor would be paid a monthly fee for the services rendered. The Operational Creditor has raised various invoices periodically and the Corporate Debtor was paying the dues on adhoc basis; but with inordinate delay. It was submitted that as per the O&M Agreement, the Corporate Debtor is liable to settle the dues before the due date i.e. 20 days from the date of Invoice.

7. The Learned Counsel for the Operational Creditor submitted that though the O&M Agreement was entered in the year 2013, owing to delays in completion of the project, the consent to operate the CETP was granted by Tamil Nadu Pollution Control Board (TNPCB) only for 15% of the CETP's designed capacity and as a result of which the Corporate Debtor was unable to meet the O&M costs. Further in the year 2016, TNPCB ordered for closure of 2 out of the 5 members of the Corporate Debtor CETP. As a consequent to this the Corporate Debtor Suspended the operations at the CETP and

sent a letter on 26.08.2016 requesting the Operational Creditor not to charge any O&M fees for the period when the operations at CETP was suspended and also requested for a 25% discount on the invoices raised by the Operational Creditor for the months of January 2016 to March 2016.

8. It is averred in the application that after considering the Corporate Debtor's financial status the Operational Creditor agreed to extend 25% discount on O&M charges from August 2016 till May 2019. In addition to the above, again on 30.06.2017 the Corporate Debtor had sent a letter to Operational Creditor to provide a further discount of 50% which was rejected by the Operational Creditor.

9. It is submitted that the Operational Creditor had sent a letter on 17.11.2017 requesting the Corporate Debtor to clear the outstanding dues. In response to the said letter on 29.11.2017 it was confirmed that a sum of Rs.9,82,130 towards PMA charges was remitted and agreed to clear the balance outstanding by way of monthly instalments of Rs.5,00,000.

10. Further it was submitted by the Ld. Counsel of the Operational Creditor that the Corporate Debtor on 06.06.2019 informed the Operational Creditor about closure of Corporate Debtor's member units by TNPCB and requested to temporarily demobilise operations. Thereupon, the Operational Creditor through its letter dated

24.06.2019 conveyed its decision to demobilise and requested the Corporate Debtor to clear the outstanding dues. To this, the Corporate Debtor agreed to pay through monthly instalments of Rs.5,00,000 which was rejected by the Operational Creditor. The Corporate Debtor had thereafter; vide its letter dated 09.08.2019, raised wholly untenable reasons inter-alia, pertaining to delay in procurement of MVRE bags, non-functioning of member units which were rejected by the Operational Creditor.

11. After numerous communications, a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 was issued by the Operational Creditor to the Corporate Debtor on 10.01.2020 and the same was delivered to the Corporate Debtor on 30.01.2020, to which the Corporate Debtor has not responded. It was also submitted that the Corporate Debtor has not paid the outstanding amount as per the invoices and no reply to these invoices were made by the Corporate Debtor. Under these circumstances, the Operational Creditor submitted that the Corporate Debtor has committed a default in the payment of the debt amount which is due and payable to the Operational Creditor and hence prayed for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

12. The Respondent has filed the counter. The Learned Counsel for the Respondent at the outset submits that the present Application is not maintainable in view of the fact that there is a dispute between the parties.

13. The Learned Counsel appearing for the Corporate Debtor submitted that, the Corporate Debtor raised various pre-existing disputes with the Operational Creditor even before the receipt of demand notice. The Operational Creditor had arbitrarily without considering the reduced inflow of effluents has raised invoices and therefore the Corporate Debtor vide its letter dated 09.08.2019 had duly intimated the Operational Creditor about various discrepancies in monthly invoices raised by the Operational Creditor and had requested the Operational Creditor to reconcile the same.

14. It is further stated that the Corporate Debtor has sent a letter dated 28.08.2019 to the Additional Director, Department of Handloom & Textiles under Ministry of Textiles about the deficiency of services rendered by the Operational Creditor.

15. It is further submitted that the Operational Creditor through their legal counsel, vide letter dated 02.03.2022 had called upon the Corporate Debtor for negotiation by invoking Clause 33 of the Operation and Service Agreement & Maintenance and Repairs Agreement as well as Clause 19 of the Projection Management

Agreement and further indicated that in case of failure of negotiation the Operational Creditor would initiate Arbitration proceedings against the Corporate Debtor.

16. Heard the submissions made by the Learned Counsel for the parties. From the facts of the case, it is narrated above it becomes imperative for this Adjudicating Authority to adjudicate on the issue to whether there exists a 'dispute' between the parties in relation to the amount which is being claimed by the Operational Creditor for a sum of Rs. 97,58,856/-.

17. We perused the documents including the pleadings placed on record. The contention of the Learned Counsel for the Operational Creditor is that the Corporate Debtor has committed default in the payment of the sum which is due and payable by the Corporate Debtor to the Operational Creditor. This Adjudicating Authority in order to come to the conclusion that the Corporate Debtor has committed default in paying the debt amount which is due to the Operational Creditor, as to the facts of the present case has to examine in detail the clauses contained in the O&M Agreements dated 23.08.2013 entered into between the parties.

18. It is seen that the Corporate Debtor has enclosed all communications which were exchanged between the parties. On the perusal of the said documents, it is sufficiently made clear that the

Corporate Debtor has raised a 'dispute' in relation to the delay in procurement of MVRE bags, delay in completion of the work on the basis on which the work has been progressed in relation to the Operational Creditor.

19. Further, it is noted from the application that the Corporate Debtor has not replied to the demand notice sent by the Operational Creditor. However, it is seen that the Corporate Debtor has raised various disputes and deficiencies in the work carried out by the Operational Creditor and that the series of letters exchanged between the parties show that there is a dispute between the parties in relation to work done by the Operational Creditor.

20. It is required to be noted that the Hon'ble Supreme Court of India in the matter of M/s. **'Mobilox Innovations Pvt. Ltd.' Vs. 'Kirusa Software Pvt. Ltd.'** (2018) 1 SCC 353 has clearly laid down that 'the test for determination for the Adjudicating Authority is to see at the stage of Admitting/rejecting the Application 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'. Thus, it is not required for this Adjudicating Authority to enter into the gravity of the dispute which exists between the parties and is only required to see that whether the dispute as

raised by the Respondent requires further investigation and that the dispute is not patently feeble legal argument or an assertion of fact unsupported by evidence.

21. Further this Tribunal being an Adjudicating Authority under the IBC, 2016 and the proceedings before this Tribunal being summary in nature, this Tribunal unlike a Civil Court cannot indulge in the luxury of taking evidence and that the debt and default on the part of the Corporate Debtor is required to be proved by the Operational Creditor beyond reasonable doubt.

22. Thus, from the discussions made supra we are of the view that there exists a dispute between the parties and the said dispute required further investigation and hence the Application filed by the Applicant / Operational Creditor under Section 9 of the IBC, 2016 stands **dismissed**. No costs.

-Sd-	-Sd-
B. ANIL KUMAR MEMBER (TECHNICAL)	**Justice (Retd.) S. RAMATHILAGAM** MEMBER (JUDICIAL)

Sudhir