

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application bearing C.P. (IB) No. 213/MB/C-IV/2021 filed by Satec Envir Engineering (India) Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Indian Oil Corporation Limited, Corporate Debtor.
2. The Operational Creditor is a Company. The Application is filed by Mr. Amar Agarwal, Authorised Representative, duly Authorised vide Board Resolution dated 27.01.2021, passed by Board of Directors of Operational Creditor, claiming total outstanding amount of Rs.5,82,25,359/- (Rupees five crore eighty-two lakh twenty-five thousand three hundred fifty-nine only).
3. The Date of Default as mentioned in Part-IV is 15.12.2017. The Petition is filed on 04.02.2021.
4. The case of the Operational Creditor is as follows:
 - 4.1 The Operational Creditor offered for work to the Corporate Debtor at the site of Haldia Bongaigaon and Digboi Refinery. The Corporate Debtor awarded a Contract dated 31.08.2016 for the value of a sum of Rs.10,94,97,293/-
 - 4.2 The Corporate Debtor deleted work of Pre-engineering Building & Porta Cabin at Digboi Refinery from the awarded scope of work for Rs.2,65,05,640/- as per the Amendment No.1 vide Fax of Acceptance dated 26.09.2016. The Contract Agreement dated

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- 20.06.2017 was signed between the Operational Creditor and the Corporate Debtor for the execution of the project for the site of Haldia and Bongaigaon.
- 4.3 The Operational Creditor has got the inspection done from the third party i.e. M/s TUV India relating to the work performed by the Operational Creditor in accordance with requirement of the Corporate Debtor. M/s TUV India visited the site and has provided the Visit Reports with the remark “Found Satisfactory” and the said report has been provided to the Corporate Debtor accordingly. The Operational Creditor time and again sent reminders to the Corporate Debtor to pay the outstanding balance amount due, the but the Corporate Debtor defaulted on the same.
- 4.4 The Operational Creditor issued Demand Notice dated 16.09.2019 in Form 4 to the Corporate Debtor claiming total outstanding of Rs.5,82,25,359/- (Rupees five crore eighty-two lakh twenty-five thousand three hundred fifty-nine only).
- 4.5 The Corporate Debtor has replied to the said Demand Notice as interim reply vide its letter dated 18.11.2019 and 04.12.2019 denying the liability as alleged by the Operational Creditor.
5. The Corporate Debtor has filed Affidavit-in-reply dated 06.09.2021 and submits as follows:
- 5.1 On 31.08.2016, a Fax of Acceptance was issued by Engineers India Limited to the Operational Creditor for awarding the work of ‘Pre-Engineered Buildings (PEB) & Porta Cabin Works-II for Haldia, Bongaigaon and Digboi Refineries for BS-VI Project of

Corporate Debtor for a total contract value of Rs.10,94,97,293/-. The time for completion of the project was eight months from the date of FOA. The contract rates are inclusive of all taxes & duties but exclusive of Service Tax @ 15%.

- 5.2 On 12.05.2017, a letter was issued by EIL to the Operational Creditor, wherein it was stated that inspite of repeated follow-ups from EIL/Corporate Debtor and assurance from the Operational Creditor in various meetings, the Operational Creditor could neither commence the site activities nor a single item has been supplied by the Operational Creditor even after a lapse of more than a week from the contractual completion date i.e. 30.04.2017. Therefore, it was informed to the Operational Creditor that EIL/Corporate Debtor was left with no other option but to initiate action for termination as per Clause 7 of General conditions of Contract and get the work executed at the risk and cost of the Operational Creditor.
- 5.3 On 10.08.2017, Operational Creditor was informed that BS-VI project needs to be completed on time and the same monitored by ministry rigorously. Accordingly, the Operational Creditor was directed to put concreted efforts to complete the work at the earliest otherwise punitive action shall be taken according to the provisions of the contract.
- 5.4 On 09.10.2017. letter was issued by EIL to the Operational Creditor wherein it was informed to the Operational Creditor that the Competent Authority of the Corporate Debtor had granted provisional time extension up to 15.12.2017 to the Operational Creditor on a condition that price adjustment for delay in completion of work.

- 5.5 On 11.12.2017, a letter was issued by the Operational Creditor to EIL wherein delay in work execution was admitted by the Operational Creditor and request was made for additional time extension up to 31.01.2018 with as assurance to complete the work before the time extension.
- 5.6 On 14.02.2018, EIL issued a letter to the Operational Creditor informing that even after fifth provisional time extension, the Operational Creditor failed to resume the work which was abandoned w.e.f. 16.12.2017. Accordingly, the Operational Creditor was informed that in case of failure by the Operational Creditor to resume site activities and deploy responsible person at site by 20.02.2018, the Corporate Debtor would offload the balance job to other agency at the risk and cost of the Operational Creditor.
- 5.7 On 03.05.2018, a letter was issued by the Operational Creditor informing that termination was issued by EIL without giving any opportunity to the Operational Creditor to put forth its observations. Hence, on 05.12.2018, a letter was issued by EIL to the Operational Creditor wherein the work awarded to the Operational Creditor was terminated in accordance with clause 7.0.0.0 of GCC as the Operational Creditor had failed to fulfil its contractual obligations and it was also informed to the Operational Creditor that the balance work shall be carried out at the risk and cost of the Operational Creditor as per the provisions of the contract.
- 5.8 On 28.01.2019, a letter was issued by the Corporate Debtor to the Operational Creditor informing that it has been placed on

Holiday List and debarred from entering into any contract with the Corporate Debtor for a period of 03 years w.e.f. 24.01.2019.

Findings:

6. We have heard the arguments of the Learned Counsel for both the parties and perused the material on record.
7. Upon perusal of the material on record, it is observed by this Bench that EIL terminated the work awarded to Operational Creditor due non-completion of the work on 05.12.2018, and said termination took place prior to the issue of Demand Notice dated 16.09.2019 to the Corporate Debtor. The Corporate Debtor/EIL has time and again raised dispute regarding the completion of work to the Corporate Debtor.
8. On perusal of the reply to the Demand Notice, it is seen that the Counsel for the Corporate Debtor had apprised the Operational Creditor that “a Demand Notice was issued by Corporate Debtor to Operational Creditor wherein Operational Creditor was called upon to pay a sum of Rs.1,77,19,274.47/- to Corporate Debtor on account of the claim towards Risk and Cost under Clause 7.0.9.0 of GCC, claim towards Supervision Charges under Clause 7.0.9.0 of the GCC and claim towards price adjustment under 4.4.0.0 r/w clause 7.0.9.0 of GCC.” The said communication further stated that “SATEC (Operational Creditor) failed to do joint measurement and as such the measurement were taken by EIL. Therefore, the measurement taken by EIL are binding upon SATEC in terms of Clause 6.1.4.0 of GCC. It is further stated that there is no completion certificate that has been issued by EIL and as such the Project Work is not complete. It is clearly evident from the records that no amount is due and payable to the SATEC”. Further, the Corporate Debtor has referred to several

correspondences, few of which are from EIL, which refer to delay and failure to fulfil contractual obligations. In view of these facts, we are of considered view that there exists prior dispute between the parties in relation to the debt. The Learned Counsel for Operational Creditor drew our attention that the dispute, if any, pertains to the work relating to Bongaigaon Refinery and no dispute was raised in relation to work pertaining to Haldia Project. The Corporate Debtor has defaulted in payment of dues pertaining to Haldia Project. We have considered this argument and are of the opinion that we consider that there exist a dispute requiring adjudication thereof and we cannot go into adjudication of dispute, whatsoever it may be, under the Code. Therefore, we do not find any merit in this plea.

9. On perusal of the documents submitted by the Applicant, though the financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) may be payable by the Corporate Debtor to the Applicant, we cannot hold that there is default by the Corporate Debtor in payment of debt amount as existence of such debt is itself in dispute in view of various correspondence(s) placed on record. Therefore, we do not find it a fit case to allow the application u/s 9 of the Code. Hence, the Application filed by the Operational Creditor is liable to be Dismissed.

ORDER

10. This Application being C.P. (IB) No. 213/MB/C-IV/2021 filed by Satec Envir Engineering (India) Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Indian Oil Corporation Limited, Corporate Debtor is hereby **Dismissed**.

11. 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)
03.03.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)