IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB)-3625/MB/2019

Under section 9 of the IBC, 2016

In the matter of

Pooja Engineering Company

.... Petitioner

v/s.

Overseas Infrastructure Alliance (India) Private Limited

.... Corporate Debtor

Order delivered on: 20.03.2020

Coram: Hon'ble Suchitra Kanuparthi, Member (Judicial)
Hon'ble Chandra Bhan, Member (Technical)

For the Petitioner: Mr. Anant B. Bobe, Adv.

For the Respondent: Mr. Ram Upadeyay Adv.

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This Company Petition is filed by Pooja Engineering Co. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Overseas Infrastructure Alliance (India) Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment to the extent of Rs. 54,02,387/- along with the interest @ 18% p.a., by invoking the provisions of Sections 9 of I&B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

2. The Corporate Debtor issued Purchase orders No. 4500006892/25.07.2017 and 4500006894/26.07.2017 and further

amended the Purchase Orders from time to time as per the requirement suggested by the Project Implementing Agency.

3. The Petitioner was getting the machines manufactured from its vendors as per the specified technical requirement enumerated in the above said purchase orders and kept the same ready for the inspection on 23rd to 25th April 2019.

4. Petitioner raised Proforma Invoice no. 0282017/01 and 0282017/02 dated 18.08.2018 and accordingly Corporate Debtor gets the Letter of Credit No.054360219000015 and 054360219000016 dated 11.02.2019 from their bankers in favour of the Petitioner. The Petitioner however never raised any tax invoice on the Corporate Debtor.

5. After three and half months, on 05.08.2019, Corporate Debtor expressed inability to affect the inspection and dispatch of the above said material on account of termination of Corporate Debtor 's main contract with the project implementing authority in Tanzania.

6. In view of the above developments, the Demand notice under section 8 of the Insolvency and Bankruptcy Code, 2016 dated 20.09.2019 was served on the Corporate Debtor by the Operational Creditor demanding Rs.51,46,070/- plus overdue interest of Rs.2,56,317/- aggregating to Rs.54,02,387/- due as on 10th September 2019.

7. In response to the demand notice, the Corporate Debtor on 30.09.2019 raised the dispute that vide email fated 05.08.2018 the Corporate Debtor informed the Petitioner about the cancellation of contract by their contractor and denied the allegations in the demand notice.

8. The Corporate Debtor filed his reply raising the following contentions:
    a. The Corporate Debtor was appointed as the EPC Contractor by the Project Implementing Agency, DAWASA for providing / supplying Pump sets of various sizes and dimensions. The full form of DAWASA is "Dar es Salaam Water and Sewage Authority" which is located / situated abroad namely, in the United Republic of Tanzania.
    b. The Petitioner company after being satisfied with Corporate Debtor's reputation, have approached the Corporate Debtor to have business relationship with the Corporate Debtor for manufacturing and supply of Pumpsets, by making representation that they have requisite experience and expertise in manufacturing of the said product.
    c. The Corporate Debtor had believed the said representation on behalf of the Petitioner to be true & genuine, and decided to place the Purchase Order No's. 4500006892 dated 25.07.2017 and 4500006894 dated 26.07.2017 on the Petitioner with regard to the Pumpsets of various sizes and dimensions which are more specifically stated therein.
    d. The Corporate Debtor had amended the said Purchaser Orders from time to time as per the requirement suggested by the Project Implementing Agency, DAWASA which was brought to the knowledge and notice of the Petitioner Company, which is a matter of record.
    e. The Representative of the Project Implementing Agency, DAWASA had come to India from Tanzania on two occasions for the purpose of taking inspection of the Pumpsets which were manufactured by the Petitioner and after the said two inspections, the representatives of the project implementing Agency, DAWASA had pointed out defects and insisted for carrying out various rectifications in the Pumpsets manufactured by the Petitioner by way of emails. The copy of said emails written by the representatives of the Project implementing Agency, DAWASA have already been annexed by the Petitioner to their insolvency application.

f. The contract with the Project Implementing Agency, DAWASA came to be terminated and the Corporate Debtor accordingly had apprised about the said termination of the contract to the Petitioner by having meeting with the representative of the Petitioner on 05.08.2019 wherein it was agreed that the orders bearing numbers 4500006936 and 4500006937 dated 15.09.2017 and 18.09.2017 placed by the Corporate Debtor upon the Petitioner would be treated as closed without the liability of any nature whatsoever on the Corporate Debtor in respect of those two purchase orders.
g. The Corporate Debtor vide email dated 05.08.2019 informed about the closure of purchase orders in view of the termination of contract with DAWASA due to which no early execution was in-sight but also shared the contact details of the concerned persons of the Project Implementing Agency as per the request of the representative of the Petitioner company purely in the interest of salvaging the unforeseen situation and most importantly for the Petitioner for exploring the best possibilities of supplying the underlying materials to the Project Implementing Agency, DAWASA directly.
h. It is the matter of record no supply of the materials was done by the Petitioner. The Corporate Debtor further say that it is also not the case of the Petitioner that they had supplied the materials to the Corporate Debtor and the alleged liability has been incurred by the Corporate Debtor on receipt of materials under the said purchase orders.
i. It is an afterthought strategy which is being adopted by the Petitioner for initiating insolvency proceedings against the Corporate Debtor on the basis of the two Debit Notes dated – 10.09.2019 which were never served upon the Corporate Debtor and the said Debit Notes of the Petitioner came to the knowledge of Corporate Debtor only upon the receipt of Demand Notice dated 20.09.2019 sent by the Petitioner wherein the Petitioner himself admitted that the material was not ready and delivered as per the Purchase order and the materials are

not supplied to the Corporate Debtor which are being produced only at their own sweet will in terms of the time after i.e. more than 1 year later the delivery period as per the orders.

j. The Petitioner is allegedly claiming interest @ 18% p.a. for the period from 01.06.2019 to 10.09.2019 for delay beyond approximately 36 days from the date of scheduled inspection, i.e., 23rd to 25th April, 2019 in this insolvency application however such alleged contention was never raised before by the Petitioner. Admittedly, the Petitioner did not comply with the Purchase orders. Had they supplied on time, no situation like this would have arisen as the letter of credit established by the Corporate Debtor in favour of the Petitioner was valid till 10.05.2019. This fact has been suppressed by the Petitioner.

9. The Petitioner filed the rejoinder on 10.12.2019 and denied the contents of the reply filed by the Corporate Debtor. The Petitioner at para 7(d) of the rejoinder stated as follows:

(i) With reference to paragraph 8 & 14, the contents in the said paragraphs are vehemently opposed and denied as the said are bad in law as well as misrepresentation of the facts. The Petitioner claimed that no representative of the Project Implementing Agency DAWASA has visited from Tanzania for inspection till date except for TPI (Third party inspection agency BVIL) appointed by the Corporate Debtor. The material against the orders was ready on the first occasion on 03.11.2017, 17.11.2017 and 06.12.2017. Even before inspection a 60-point query was raised by the Corporate Debtor and during subsequent discussions it was revealed that the Corporate Debtor has provided incomplete technical documents to Operational Creditor. Thereafter in consultation with the M/s WAPCOS, the consultant appointed by the end user DAWASA, Tanzania, the Corporate Debtor amended the Purchase orders placed on this Petitioner on 18.08.2018 and accepted by this Petitioner on 20.08.2019. It is pertinent to note that the total value of the purchase orders is increased from Rs.

48,40,929/- to Rs. 51,46,069/- for the additional cost with respect of these latest amendments.

(ii) The purchase orders, proforma invoices, letter of credits and email correspondence, annexed to the petition at A3 to A6 clearly depicts the true facts. After the amendment inspection call were raised on 25.10.2018 and inspection was carried out by the TPI-BVIL on 29.10.2018, 31.10.2018, 01.11.2019 and 13.12.2018 and accordingly despatch release note was issued on 13.12.2018 and 30.12.2019. on 19.02.2019 the final inspection call was raised by the Petitioner for inspection on 27th and 29th February, 2019 and many times thereafter till 16.05.2019. Meanwhile, by email dated 07.03.2019, the consultants M/s. WAPSOS informed the Corporate Debtor the client intends to visit factory for inspection before despatch and on the same day the Corporate Debtor requested the consultant M/s. WAPCOS, for names, passport copies of the officials visiting India to send invitation letter required for visa processing. On 05.08.2019, the Corporate Debtor unilaterally informed this Petitioner the termination of Corporate Debtor main contract with the project implementing authority-DAWASA. The summary of dates and events is hereto annexed marked as exhibit R-1 for immediate reference.

10. Ongoing through the averments in the Petition, defence in the reply, statements of the Petitioner in Rejoinder and after hearing the counsels for the Petitioner and Corporate Debtor, it can be said that though the purchase orders were placed with amendments from time to time, post inspection of the said machines, the machines were not delivered to the Corporate Debtor. The Corporate Debtor's email dated 05.08.2019 establishes the fact that the Petitioner was informed about the cancellation of the contract and that the order was closed. Hence, there is no debt and default committed by the Corporate Debtor.

11. In view of the above CP (IB) 3625/MB/2019 filed by Pooja Engineering Company against Overseas infrastructure Alliance (India) Private Limited is dismissed.

Sd/-	Sd/-
Chandra Bhan Singh	Suchitra Kanuparthi
Member (Technical)	Member (Judicial)