

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 80/MB/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Evergreen Corporation

Address: M24, FIDA MANSION,
3rd Floor, Bibijan Street, Nagdevi,
Mumbai - 400003

...Operational Creditor/Applicant

Versus

**Satec Envir Engineering (India)
Pvt. Ltd.**

[CIN:U29197MH1991PTC064661]

Address: 102, 1st Floor, C Wing,
Waterford Building, C. D.
Barfiwala Marg, Juhu lane, Andheri
(W), Mumbai-400058

...Corporate Debtor/Respondent

Order Pronounced on 24.01.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Operational Creditor : Mr. Suraj S. Ghogare,
Advocate.
For the Corporate Debtor : Mily Ghoshal a/w Adv.
Sophia Hussian, Advocate

ORDER

Per: Mr. Prabhat Kumar

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Evergreen Corporation ("the Operational Creditor/Applicant")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Satec Envir Engineering (India) Pvt. Ltd. ("the Corporate Debtor/Respondent")**.
2. The Respondent was incorporated on 30.12.1991 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U29197MH1991PTC064661. Its registered office is at 102, 1st Floor, C Wing, Waterford building, C. D. Barfiwala Marg, Juhu lane, Andheri (W) Mumbai - 400058. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

Brief Facts:

3. The Operational Creditor is based in Mumbai and engaged in the business of stocking of Engineering tools, measuring instruments, hardware and general merchants.
4. The Corporate Debtor purchased tools and other materials from the Operational Creditor, invoices of which were raised by the Operational Creditor. The account of the Operational Creditor maintained with the Corporate Debtor was a continuous and running one and invoices were raised for the same from time to time by the Operational Creditor. The copy of the Outstanding Statement of Corporate Debtor maintained by the Operational

Creditor and the copy of the Invoices against which the amount is due as per the Outstanding statement for the Financial years of 2016- 2017,2017-2018, 2018-2019 has been placed on record by the Applicant.

5. The Applicant then sent reminders to the Respondent for payment of amounts raised in the invoices. Despite of continuous reminders the Respondent neglected and avoided to pay the amount due to the Applicant. The last date of payment made by the Respondent was on 12.05.2017 for a sum of Rupees 2,00,000/- (Rupees two lakhs only) which is reflected in the Ledger Account maintained by both the parties. The date of default is hence stated to be 12.05.2017.
6. Thereafter, despite of the repeated reminders and requests made by the Applicant, the long outstanding dues were not cleared. A cheque dated 14.02.2019 was issued for a sum of Rs.2,99,520/- (Rupees Two Lakhs Ninety-Nine Thousand and Five Hundred Twenty) only. On presentation the same was returned with an endorsement stating "*Funds Insufficient*".
7. The Applicant has maintained party wise Ledger account of the Respondent which reflects the outstanding amount due from the Respondent. A copy of the Ledger Account for the financial year, 2016-2017, 2017- 2018 and 2018-2019 of the Respondent maintained by the Operational Creditor reflecting the outstanding corporate debt has been placed on record.
8. A demand notice dated 08.08.2019 u/s 8(1) in form 3 of the Insolvency and Bankruptcy Code, 2016 was thus issued by the Operational Creditor, calling for the unconditional repayment of the unpaid operational debt within ten days, and the same was duly served on the registered office of the Respondent on 13.08.2019.

9. Thereafter, the Respondent issued a Reply to the Notice, dated 21.08.2019 thereby submitted that there is pre-existing dispute as per section 5(6).
10. The total amount of debt from the Respondent is a sum of Rs.25,88,608/- (Twenty - Five Lakhs Eighty Eight Thousand Six Hundred and Eight Rupees Only) till date which stands due, outstanding and payable to the operational creditor being Rs.16,97,448/- (Sixteen Lakhs Ninety Seven Thousand Four Hundred and Forty Eight only) as the principal amount and Rs. 8,91,160 /- (Rupees Eight Lakhs Ninety One Thousand One Hundred and Sixty Only) as interest calculated @21% per annum.

Submissions of the Applicant:

11. The Applicant has submitted that the Corporate Debtor has on several occasions through telephonic calls asked the Operational Creditor to supply engineering tools, hardware and ancillary products on an urgent basis without even placing an official order for the same. However, the Operational Creditor has on each such occasion accommodated the requirements of the Corporate Debtor and ensured timely supply of the tools and equipment to the Corporate Debtor on an urgent basis, as and when asked by the Corporate Debtor.
12. The Ledger Account maintained by the Respondent for the financial years 2016-2017, 2017-2018 and 2018-2019 clearly reflects the outstanding debt amount unpaid to the Operational creditor. However, the payments made by the Corporate Debtor were irregular.
13. The contentions of the Respondent regarding dispute between the parties made in the reply notice dated 21.08.2019 of the Respondent is false and based on imaginary facts.

14. The Applicant has further submitted that the operational debt due and payable to the Operational Creditor is after deducting dues, if any payable by the Operational Creditor to the Corporate Debtor.
15. The last payment done by the Corporate Debtor was on 12.05.2017 for a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) after which no payment was done by the Corporate Debtor to the Operational Creditor. The Corporate Debtor then issued a cheque dated 14.02.2019 which was returned by the bank with an endorsement stating "*Funds insufficient*". The Operational Creditor still continued to supply tools and equipments to the Corporate Debtor in good faith and to maintain ongoing business relations with the Corporate Debtor.
16. Regarding the quality of the products supplied by the Operational creditor, the Operational Creditor has submitted that the parties had never agreed upon any specific brand of tools and equipments to be supplied by the Operational Creditor to the Corporate Debtor. The Operational Creditor has always supplied best quality materials to the Corporate Debtor and ensured pick up of the rejected materials that were rejected by the Corporate Debtor citing being of unsatisfactory quality. The Applicant has placed on record gate pass issued to the Operational Creditor by the Corporate Debtor for pickup of rejected materials and a copy of the credit note dated 25.04.2018. The Applicant has also placed on record Credit note dated 09.05.2018 against the rejected material. Credit notes for various other rejected materials have also been placed on record.
17. Vide email dated 07.03.2019, the Applicant has agreed that the quality of materials supplied by it were not upto the mark. The Applicant has also clarified in the said email that as agreed between the parties, there would be no replacement of the materials after a lapse of almost 10 months. The Applicant had also conveyed to the representative of the Respondent that it would give replacement of

the materials supplied in and from the month of July 2018 as was originally agreed by and between the parties, the Respondent still continued to return the materials to the Applicant.

18. The Applicant has also contended that the reply notice dated 21.08.2019 of the Respondent is not an effective notice of pre-existing dispute under Section 5(6) of the Code.

Submissions of the Respondent:

19. The Respondent submits that at the relevant time, the Respondent was engaged in a project for which they had approached the Applicant believing that the Applicant was efficient enough in supplying the required tools and equipment as and when required by the Respondent for timely completion of the project.
20. The Applicant pretended to be capable of supplying various tools and equipment required by the Respondent, however, the product supplied by the Applicant were faulty, defective and obsolete. The Applicant denied to replace the same despite repeated requests from the Respondent to replace the same. This hampered the pace of work which ultimately damaged the goodwill of the Respondent.
21. The Respondent further submitted that the Applicant is neither eligible nor liable to receive any kind of alleged principal amount and/or the interest amount.
22. The grounds on which the Respondent has sought dismissal of the present Application are as under:
 - a. Pre-existing disputes between the parties;
 - b. Fraud played by the Applicant on this Tribunal;
 - c. The Petition is defective since it does not have Affidavit u/s 9(3)(b) and the Affidavit u/s 9(3)(c) is faulty.

23. The Respondent had informed the Applicant regarding the inferior quality of the materials supplied by the Applicant and to lift the rejected materials from the site vide letter no. Satec/Stores/10/2018-19 dated 26.04.2018 but the Applicant failed to take any steps.
24. Vide email dated 19.04.2018 it was specifically informed to the Applicant that the pug machine supplied by the Applicant had no marking of make and model which was bought from the Applicant on an urgent basis. Hence, the Applicant failed to supply quality products as assured by them.
25. The respondent has relied upon the decision given by the Hon'ble Supreme Court in the case of *Kay Bouvet Engineering Ltd. v/s. Overseas Infrastructure Alliance (India) Pvt. Ltd.* Wherein it has been held that *"(Para 17) It is thus clear that once the "Operational Creditor" has filed an application which is otherwise complete, the adjudicating authority has to reject the application under section 9(5)(ii)(d) of IBC, if a notice has been received by "Operational Creditor" or if there is a record of dispute in the information utility. What is required is that the notice by the "Corporate Debtor" must bring to the notice of "Operational Creditor" the existence of a dispute or the fact that a suit or arbitration proceedings relating to a dispute is pending between the parties. All that the adjudicating authority is required 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 a mere bluster. It has been held that however, at this stage, the court is not required to be satisfied as to whether the defence is likely to succeed or not. The Court also cannot go into the merits of the dispute except to the extent indicated hereinabove. It has been held that so long as a dispute truly exists and is not spurious,*

hypothetical or illusory, the adjudicating authority has no other option but to reject the application."

26. The Respondent has also relied on decision given in the case of *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*

Findings:

27. Heard learned Counsel for the Applicant and Respondent. Perused the records.

28. From the record, it is seen that there is existence of dispute between the Applicant and the Respondent and the same was notified to the Applicant vide reply notice dated 21.08.2019 sent by the Respondent in response to the demand notice dated 08.08.2019 under Section 8.

29. It is evident from the email communications dated 09.04.2018, 26.04.2018, 30.04.2018, 10.05.2018, 21.06.2018, 07.03.2019, and 27.03.2019 placed before us that the Applicant was notified about the rejected materials on the ground of inferior quality. Email dated 19.04.2018 quotes "*Dear Lalit Bhai, As per below trailing mail received from our factory, Pls note That the Pug machines which we received their no marking of make & model kindly confirm the same urgently. Also send the Data/Technical Sheet for same*".

Email dated 26.04.2018 quotes "*Sub: Rejection Note*

Ref: Invoice/Challan No. 31113 Date 09.04.2018

Dear Sir,

MRN No. 16 Date-12.04.2018

We have received material supplied against PO No. 01C vide Your Invoice/Challan No. 31113 found Rejected. The Details are given as under:

Sr.No	Item Description	UOM	Challan Qty	Qty Recd	Damag e	Rejecte d	Remark s
1	Saw Wire 3.15 MM- HSN-7408	Kgs.	100	100	50	50	2 spools found wet & heavy rusty hence rejected.

You are requested to please:

#Arrange to lift the material within 1 days at your own cost; otherwise we will not be responsible.

#Arrange to Issue the CREDIT NOTE against Rejection Material Immediately.”

Email dated 30.04.2018 quotes “Dear Om, Please find attached Rejection details of materials received from Evergreen Corporation till date.”

Further, email dated 10.05.2018 quotes “Dear Priyanka,

As discussed please find below rejection details for making Debit Note-

Sr.No	Description	Qty	UOM	Inv. No.	Basic Rate	Total	HSN
1.	Broach Cutting Machine CUB Model	3	Nos.	31115	37500	112500	8461
2.	Line Tester- Taparia Model 813.500v	4	Nos.	31117	40	160	8205
3.	Pug Cutting Machine	4	Nos.	31134	16500	66000	84682010
4.	Mig Welding	1	Nos.	31163	10500	10500	8515

	<i>Torch (Panasonic)</i>						
5.	<i>Hose Clamp 3/4"</i>	<i>100</i>	<i>Nos.</i>	<i>31119</i>	<i>10</i>	<i>1000</i>	<i>7307</i>

Evergreen GST No. 27AAEPS9747C1ZD"

30. It is contended by the Respondent that the Applicant failed to provide quality products as assured by it and several products supplied by the Applicant were rejected by the Respondent on the grounds of same being of inferior quality. The Applicant has acknowledged the inferior quality of its products by producing gate pass issued by the Respondent for picking up the rejected materials. The email communications placed on record further demonstrate the communication of inferiority in the products supplied by the Operational Creditor prior to issuance of the demand notice. Since there exists prior dispute in relation to quality of goods supplied, which was brought to the notice of Operational Creditor prior to issuance of demand notice, the existence of dispute is clearly established. It is trite law that this Tribunal does not have adjudicatory power and can proceed in the Application filed under Section 9 of the code only in relation to undisputed debt.
31. Considering the above facts and circumstances, since there is dispute between the parties on the subject matter of the present Application, the present Application is disposed as dismissed under Section 9(5)(ii)(d) of the Code.
32. The Petition bearing **C.P.(IB)No.80/MB/2020** filed by **Evergreen Corporation**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Satec Envir Engineering (India) Pvt. Ltd.**

[CIN:U29197MH1991PTC064661], the Corporate Debtor, is hence **disposed as dismissed**.

33. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
34. Ordered accordingly.

Sd/-

Prabhat Kumar
Member (Technical)
/MK/

Sd/-

Justice V. G. Bisht (Retd.)
Member (Judicial)