

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

**CP (IB) 501/MB /2020**

Under Section 9 of the Insolvency and Bankruptcy  
Code, 2016

**In the matter of**

**Caryaire Equipment India Pvt Ltd .**

**...Operational Creditor/Applicant**

Versus

**Weatherspell Aircon Engineers Pvt Ltd.**

**...Corporate Debtor/Respondent**

**Order Delivered on 14.06.2024**

***Coram:***

Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).

Hon'ble Member (Judicial)

***Appearances:***

For the Operational Creditor : Adv.Samrudhi S.Gholap a/w  
Adv.Raghvendra S

For the Corporate Debtor : Mr. Sanam Kabre, Adv

**ORDER**

***Per: V.G Bisht, Member(Judicial)***

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MUMBAI COURT-1

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1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by M/S Caryaire Equipment India Pvt Ltd. ("**Operational Creditor**"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Weatherspell Aircon Engineers Pvt Ltd. ("**Corporate Debtor** ").
2. The Corporate Debtor is incorporated on 23.03.2010 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U51909PN2010PTC135886. The Corporate Debtor's registered office is situated at FL-3, 1<sup>st</sup> Floor, Crescent Exclusee ,1162/3, B/H Simla Office, Shivajinagar, Pune MH-411005. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
3. The Present Petition is filed as the Corporate Debtor owes to the Operational Creditor an amount Rs.28,68,782/- (Twenty-Eight Lakhs Sixty-Eight Thousand Seven Hundred and Eighty-two Rupees Only) as on 31.07.2019, which is the date of Default. The principal unpaid invoices are Rs.20,31,394/- together with interest calculated at the rate of 24% P.A. accrued thereon of Rs.8,37,388/-

**Submissions made by the Petitioner:**

4. The Operational Creditor is into the Business of manufacturing and selling of Air Distribution Products, Sound Control Products, Smoke & Fire Control Devices, Air Ventilation & Air pollution control products, volume control Dampers etc.
5. The Operational Creditor submits that the Corporate Debtor approached the Operational Creditor to get the supply of Demper, Diffuser, Grills, etc. and made several representations, based on which several supplies were made based on the purchase order.
6. The Operational Creditor raised invoices for the said supplies as per the purchase order. The invoice raised thereto were duly accepted by

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Corporate Debtor without any protest or objection. Further as per the mutually decided terms and as per the market practice after issuance of the invoice, part payment along with sale tax exemption form i.e. Form-C was issued by Corporate Debtor.

7. The Operational Creditor submits that the Corporate Debtor delayed and avoided making payments on one pretext or another even after duly receiving the products and services to the complete satisfaction from time to time. The Outstanding dues were time to time communicated/informed to Corporate Debtor and Corporate Debtor each time assured the Operational Creditor that the outstanding payment would be made in due course of time.
8. The Operational Creditor submits that in furtherance to the issuance of the letter confirming the outstanding due, the Corporate Debtor issued an email confirming the Principal outstanding and assuring to pay the principal outstanding in two instalments.
9. The Operational Creditor submits that they were left with no other option but to approach their advocate to issue the Statutory Demand notice on 28.08.2019 under section 8 of the code read with Rule 5 of the Insolvency and Bankruptcy Code 2016, calling upon the Corporate Debtor to unconditionally repay the unpaid admitted operational Debt within 10 days from the receipt of the said notice.
10. The Operational Creditor submits that the Corporate Debtor even after receiving the Demand Notice under Section 8 of this code, failed to pay the admitted outstanding amount to the Operational Creditor till date and has not raised any dispute, which can be presumed that they have admitted their liability.

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11. The Operational Creditor has stated the following Invoices which were outstanding. Following are the table of unpaid invoices:

Sr.No.	Bill Date	Bill No.	Amount (In RS.)
01	22.09.2017	BF17IS-00189	40,132.00
02.	22.09.2017	BF17IS-00190	33,211.00
03.	31.10.2017	BF17IS-00280	51,330.00
04.	31.10.2017	BF17IS-00279	149,023.00
05.	17.11.2017	BF17IS-00333	4,515.00
06.	09.10.2017	I617IS-00303	417,628.00
07.	21.11.2017	I617IS-00303	889,223.00
08.	21.11.2017	I617IS-00303	44,674.00
09.	07.12.2017	I617IS-00516	401,658.00

**Submissions made by the Corporate Debtor:**

12. The Corporate Debtor at the very outset denies all the averment made by the Operation Creditor. Also prays for the dismissal of this petition before this tribunal.
13. The Corporate Debtor submits that they are engaged in the business of providing services in the related to heating, ventilation and air conditioning solutions.
14. The Corporate Debtor submits that they have placed an order for goods and equipment from the Operational Creditor for a project situated at Nagpur, Maharashtra. The said project was called Shapoorji HCL Project and it required the Corporate Debtor to install air conditioning and ventilation systems at the project site.

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15. The Corporate Debtor submits that the first dispute arose in August 2017 when the Corporate Debtor placed an order with the operational creditor ,who agreed to supply the said goods by the end of August, 2017. Further on 09.09.2017, a dispute arose in regard to the delay of goods by the Corporate Debtor and thereafter Operational Creditor gave a revised commitment for delivery of goods and they failed to deliver the goods on the said date also. After failing to comply with the commitment, the Operational creditor had assured the Corporate Debtor that goods will be delivered on the following dates:

- 18.09.2017
- 19.09.2017
- 21.09.2017

It is pertinent to note that the Operational Creditor failed to supply the goods on the date which is mentioned above. The delay in delivery led to a further delay in completion of the project which was awarded to the Corporate Debtor. The Corporate Debtor had to bear the consequences of the delay.

16. The Corporate Debtor submits that the Operational Creditor supplied goods at the project site of the Corporate Debtor. However, upon the inspection of the supplied goods it was discovered that the goods were grossly defective and did not match with the requirement which was communicated to the Operational Creditor. Further the Clients of the Corporate Debtor reprimanded and refused to accept the said goods. The defective goods resulted in loss to the Corporate Debtor and resulted in loss of goodwill.

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17. The Corporate Debtor submits that on 21.12.2017 they have Communicated Operational Creditor about the defect in the goods and raised a dispute on the invoices which were raised by the Operational Creditor. The Corporate Debtor further submits that nowhere in the Petition the Operational Creditor has disclosed the existence of this dispute and is conveniently attempting to conceal pertinent facts from this tribunal.
18. The Corporate Debtor submits that this Petition is filed without the mandatory compliance of section 8 of this Code which requires the Operational Creditor to serve a demand notice in prescribed format however it appears that the notice sent by the Operational Creditor is a simpliciter legal notice and not a demand notice which is specifically prescribed in Form-III and IV of this Code, which is a precondition to file an insolvency Petition under Section 9 of this Code. Therefore, by virtue of such non compliance of mandatory provisions , the present Petition is not tenable and deserves to be dismissed.

**Findings:**

19. Heard learned Counsel for both the parties. Perused the records.
20. We find that the Operational Creditor issued a Demand Notice in Form-3 in terms of rule 5 (1)(a) of the IBBI (Application to the Adjudicating Authority ) Rules of 2016 on 28.08.2019, to the Corporate Debtor, the said demand notice was send by speed post on 28.08.2019 as evidence from the photocopy of the postal receipt enclosed with pursis dated 7.05.2024.A copy of the pursis also served upon the Corporate debtor on 07.05.2024 and is not contested by the Corporate Debtor. Accordingly, we have no hesitation that the demand notice was duly served.
21. The Corporate Debtor has raised a pre-existing dispute between the Applicant and Corporate Debtor prior to issuance of the statutory notice

dated 28.08.2019. The corporate debtor communicated to the Operational Creditor Upon the inspection of the supplied goods it was discovered by the Corporate Debtor that the said goods were grossly defective and did not match with the requirement which was communicated to the Operational Creditor , and in the course of delivery of the goods, there had been various issues with regard to quality, delivery etc. for which various negotiations and/or meetings had taken place and/or communications had been exchanged between the parties.

22. The various correspondence between the parties shows that there was a dispute with respect to work on various counts. In one of the email dated 18.09.2017, it is mentioned by the representative of the Corporate Debtor that **“As discussed regarding Grill you have supplied in the first lot for GF It Building , it was found that grill is not as per specification provide to you, the spacer of grill are required is in black colour (clearly mentioned) and you provided it in White colour, this is not acceptable at any cost, so please take necessary action immediately and make it correct before Saturday(21.10.2017).Site is ready to installed Grills and client visit is on Monday(23.10.2017)”** and this is for the second time the Corporate Debtor communicated with the Operational Creditor via email on 21.12.2017, expressing concerns about the inferior quality of the goods supplied by the Operational Creditor. A representative of the Corporate Debtor mentioned that, **“that is in reference to the last lot of grilles delivered at site. We are unable to understand that we had given order to Caryiare based on our understanding that Caryiare delivers better service than other vendors in market. But recently there was second instance where we had to hear from Client for bad quality material received at site. Please refer attached images. Pregnant grilles are delivered at site. They are of lower thickness; powder coating quality is not good enough & alignment is not proper. This was found by Client & them have severely scolded us for these grilles. We were**

**following up for ground floor replacement grilles since long. And when the material is delivered it is of such quality. This is very disappointing as we had to hear second time because of Caryiare. Please take a note of this& please ensure to deliver correct &good quality material at site”.**

23. We take a note that since the claim in question is under dispute and not an admitted debt, this tribunal has no jurisdiction to entertain the present matter.
24. Accordingly, we have no hesitation to hold the present petition is not maintainable in account of Pre-existing dispute as it is necessary to look into the email communications between the parties which is annexed by the Corporate Debtor in their Reply in the current petition. At last we make it clear that our observation in relation to the claim raised to by the corporate shall not prejudice the contentions of either party in relation to merits of the claim. Hence the Petition is dismissed.

**Order**

- a. In the above circumstances the petition bearing **CP(IB) 501/MB/C-I/2020** filed by **Caryaire Equipments India Pvt Ltd**, 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 **Weatherspell Aircon Engineers Pvt Ltd**, the Corporate Debtor, is dismissed.

**Sd/-**

**PRABHAT KUMAR**  
**Member (Technical)**

**Sd/-**

**JUSTICE V.G BISHT**  
**Member (Judicial)**