

**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**CP (IB) No. 65/Chd/Hry/2019**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016.**

**In the matter of:**

**M/s Geron Engineering Private Limited,**

Having its corporate office at  
P4, BS Road, Industrial Area,  
Ghaziabad-201009

...Petitioner-Operational Creditor

Vs.

**M/s Ecogreen Energy Lucknow Private Limited**

having its registered office at  
160, Tatvam Villas,  
Sector 48,  
Sohna Road,  
Gurgaon, Haryana-122002

...Respondent-Corporate Debtor

**Judgement delivered on: 16.07.2021**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)  
Hon'ble Mr. Raghu Nayyar, Member (Technical)**

For the Operational Creditor: Mr. G.S. Sarin, Practising Company Secretary

For the Corporate Debtor : Mr. Anand Chhibbar, Senior Advocate  
Mr. Vaibhav Sahni, Advocate  
Ms. Shefali Pawar, Authorized Representative.

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

### **JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC, 2016'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**for brevity 'the Rules'**) by M/s. Geron Engineering Private Limited (**for brevity 'Operational Creditor/Petitioner'**), with a prayer to initiate the Corporate Insolvency Process (**for brevity 'CIRP'**) against M/s. Ecogreen Energy Lucknow Private Limited (**for brevity 'Corporate Debtor'**).

2. The Corporate Debtor namely, M/s. Ecogreen Energy Lucknow Private Limited is a Company incorporated on 17.03.2017 under the provisions of Companies Act, 1956 with CIN No. U40106HR2017PTC068191 having its registered office at Gurgaon which falls within the State of Haryana. Hence, the jurisdiction lies with this Adjudicating Authority. The Authorized Share Capital of the Respondent Company is ₹78,27,17,060/- and Paid-Up Share Capital of the Company is ₹78,18,17,060/-. Copy of Master Data of corporate debtor is found attached as Annexure A-1 of petition.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor is engaged in the business of fabrication and manufacturing of various equipment for solid waste management and municipal garbage handling. The corporate debtor is working on integrated solid waste management project in Lucknow, U.P. and for functioning of the said project, the operational creditor has supplied equipment, spares and repaired several existing equipment over last one year to corporate debtor. It

is stated that the operational creditor raised various invoices from 09.11.2017 to 22.10.2018 aggregating to ₹1,30,50,059/- out of which the corporate debtor had made only part payment of ₹14,91,750/-. As per Part-IV of the Form 5, the total amount claimed to be in default is ₹134.72 lacs (including interest @18% amounting to ₹19,14,018/-) as on 02.01.2019.

4. It is stated that the respondent-corporate debtor has failed to discharge its obligation towards the applicant-operational creditor, in as much as has failed to make the payment due to the applicant-operational creditor.

5. A demand notice in Form 3 and Form 4 dated 02.01.2019 along with copy of invoices from 09.11.2017 to 22.10.2018 was sent to the registered address of the corporate debtor on 04.01.2019, however, the same was returned undelivered. (Diary No.1010 dt. 27.02.2019). The demand notice was also served by hand to the registered office of the corporate debtor on 04.01.2019. The corporate debtor vide these demand notices was called upon to repay the total unpaid operational debt of ₹134.72 lakhs within 10 days. Copy of postal receipts and acknowledgement of hand delivery of demand notices is attached at Annexure A-9, A-10 and A-11 respectively.

6. It is deposed that the operational creditor has not received any notice relating to the dispute of the unpaid operational debt. The affidavit is appended with petition at Annexure A-12 (Diary No.1010 dt.27.02.2019).

7. In Part III of Form 5, the operational creditor has proposed Mr. Nirmal Kumar Bhesoni, bearing registration No. IBBI/IPA-001/IP-P000010/2016-17/10016 as the Interim Resolution Professional. The consent of the proposed IRP furnished in Form 2 is placed at Annexure A-3, in which he has stated that he is currently serving as a Resolution Professional in one

another proceeding. It is also stated that there are no disciplinary proceedings pending against the professional with the Board or with Indian Institute of Insolvency Professional of ICSI.

8. Notice of this petition was issued to the corporate debtor on 15.03.2019 to show cause as to why this petition be not admitted.

9. Respondent-corporate debtor filed reply vide Diary No. 4548 dated 03.09.2019, in which it has been stated that the respondent is not in receipt of any demand notice from the operational creditor and the petitioner company was solely incorporated to siphon off the funds provided by the parent company of the respondent company in order to manage the projects in India by creating fake and back dated invoices and purchase order. Also, there is no record of any work activity of goods received note submitted by the petitioner for alleged repair and maintenance work. It is also stated that a warning notice dt.06.12.2018 (Annexure A-5) has also been issued to the petitioner stating the machinery supplied was all defective and sub-standard and thereafter a legal notice dt.07.01.2019 was issued to the operational creditor by the respondent cancelling all the purchase orders forthwith (Annexure A-6).

10. The petitioner filed rejoinder (Diary No. 4772 dt.13.09.2019) stating that the due of the operational creditor amounting to ₹98,85,537/- are admitted in the audited balance sheet of the corporate debtor for the FY 2017-18 (Annexure A/3) which was signed by the Chinese Management which demonstrates their control on the operations of CD in India. It is stated that all the representations to the parent company were jointly made by the Indian and Chinese team members and related party disclosures were fully complied

with as per Indian Law. Also, all the invoices of the OC were duly received by the Lucknow team of the Corporate debtor, attached as Annexure A/6 and the warning letter & legal notice sent by the Corporate debtor was duly replied, annexed as Annexure A/1 & A/2.

11. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

12. The first issue to be decided is whether the statutory demand notice was validly served on the respondent-corporate debtor. It is the case of the petitioner that a statutory demand notice was issued on 02.01.2019 to the registered address of the corporate debtor, however, the same was undelivered. Thereafter, the demand notice was delivered to the corporate debtor by hand vide Annexure A-9 receipt. The respondent-corporate debtor contends that the demand notice was not delivered as evidenced by Annexure A-10 tracking report and that the alleged delivery by hand vide Annexure A-9 through its Watchman is invalid. But it is not in dispute that the demand notice was sent through speed post to the address of the respondent-corporate debtor as mentioned in its master data and when the same was offered to deliver at the said address and when the same was unclaimed, it should be treated as a valid and proper delivery of the demand notice, as per the settled principles of law. Hence, this issue is decided in favour of the petitioner.

13. The next issue is whether the petitioner has proved the existence of an enforceable debt and the liability to pay the same by the corporate debtor. The corporate debtor while not disputing the various transactions between the parties, however, while drawing our attention to Annexure 5 warning notice dated 06.12.2018 and Annexure 6 legal notice dated

07.01.2019 submitted that there was a pre-existing dispute between the parties and hence, the CP is liable to be dismissed. The petitioner-operational creditor while not disputing the fact of receipt of Annexure 5 warning notice dated 06.12.2018 even before issuance of the statutory demand notice dated 02.01.2019 to the corporate debtor, however, submits that the said warning notice was duly answered by the petitioner and hence, it cannot be said that there was a pre-existing dispute between the parties. It is not in dispute that the respondent-corporate debtor vide Annexure 5 warning notice has raised serious allegations of breach of the contract, malpractice, defective and substandard supply of machinery and threatened to revoke/cancel the contract between the parties. The petitioner failed to show the settlement of those disputes either before issuance of the demand notice or thereafter. In the absence of the same, it is to be concluded that there is a pre-existing dispute between the parties and that the CP is liable to be dismissed on this ground. Hence, there is no necessity to go into other allegations and counter allegations made in the CP.

14. In these circumstances and for the aforesaid reasons, we do not find any merit in the CP (IB) No. 65/Chd/Hry/2019 and accordingly, the same is dismissed.

Sd/-  
(Raghu Nayyar)  
Member (Technical)

July 16<sup>th</sup>, 2021  
YP

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)