



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No. 792/MB-IV/2021**

Under Section 9 of the I&B Code, 2016

In the matter of:

**North Agro Industries Private Limited**

[CIN: U29210CH2015PTC035445]

...Operational Creditor/Applicant

V/s

**Mahindra and Mahindra Limited**

[CIN: L65990MH1945PLC004558]

...Corporate Debtor

Order Dated: 10.08.2023

*Coram:*

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Operational Creditor(s) : Mr. Rohit Gupta a/w Mr. Mohammed  
Varawala i/b Ms. Rubina Khan,  
Advocates.

For the Corporate Debtor(s) : Mr. Shyam Kapadia a/w Ms. Nitika  
Singh & Mr. Ankit Kale, Advocates.

**ORDER**

*Per: Kishore Vemulapalli, Member Judicial*



1. This is an Application being C.P. (IB) No. 792/MB/C-IV/2021 filed on 15-02-2021 by North Agro Industries Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Mahindra and Mahindra Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
  - 1.1 The total amount of debt claimed is 3,77,95,546 (Rupees Three Crore Seventy Seven Lakh Ninety Five Thousand Five Hundred Forty Six Only).
  
2. The Operational Creditor is the business of supplying machinery, like combine harvesters and tractors to buyers across the country. The Corporate Debtor regularly placed orders and purchase the aforementioned machinery from the Operational Creditor.
  - 2.1 As per the commercial arrangement between the parties (a) the Corporate Debtor used to place orders with the Operational Creditor, (b) In terms thereof, the machinery was supplied by the Operational Creditor directly to the dealers of the Corporate Debtors, and (c) on delivery of the machinery, the Corporate Debtor was liable to release payments as per the invoice raised by the Operational Creditor.



- 2.2 Accordingly, from January 2015 March 2016, the Operational Creditor supplied machinery worth Rs. 1,47,65,400/- to the Corporate Debtor and 174 invoices for the said goods were raised from time to time for machinery supplied to the Corporate Debtor.
- 2.3 The Operational Creditor states that in spite of numerous reminders and communications, the Corporate Debtor delayed payments for one reason or another and as such has not released any payments till date. It is submitted that in terms of the invoice, the said amounts were incurring interest at 24% per annum from the due date.
- 2.4 The Operational Creditor further states that in the year 2017, on account of continued non-payment of dues, the Operational Creditor instituted a claim before Micro, Small & Medium Enterprises Facilitation Council, Punjab Camp at Chandigarh ('MSME Council'), and the Council referred the matter for Arbitration under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006. However, the Corporate Debtor has challenged this reference on ground of jurisdiction of Council to do so, and the same is still pending before Hon'ble Punjab & Haryana High Court.



- 2.5 Subsequently, the Operational Creditor sent several reminders to the Corporate Debtor requesting for repayment of the outstanding amounts. However, till date, no amounts have been repaid.
- 2.6 On 10.03.2020, the Operational Creditor was constrained to issue a Demand Notice under Sec.8 of I&BC, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for the operational debt of Rs. 3,77,95,546/- (Rupees Three Crore Seventy Seven Lakh Ninety Five Thousand Five Hundred Forty Six Only), i.e. Rs. 1,47,65,400/- (Rupees one Crore Fourty Seven Lakh sixty five Thousand Four Hundred sixty nine only) as principal amount due and Rs. 2,30,30,146/- Rupees Two Crore Thirty Lakh Thirty Thousand one Hundred Forty Six Only) as interest thereon, till 25.02.2020.
- 2.7 The Corporate Debtor issued a reply to the demand notice dated 18.03.2020 rejecting the demand raised by the Operational Creditor on account of pending litigation between the parties before the Ld. MSME Council, Sangrur and Hon'ble High Court of Punjab and Haryana.
- 2.8 The Corporate Debtor vide email dated 31.05.2020 sought the details of the outstanding amounts due and payable to the



Operational Creditor. It is submitted that on 05.06.2020, the Operational Creditor once again provided details of the outstanding balance amounts due and payable by the Corporate Debtor to the Operational Creditor vide email dated 05.06.2020. This clearly Indicates that disputes sought to be raised in 18.03.2020 the Reply dated were spurious, hypothetical and illusory. However, no payments have been forthcoming from the Corporate Debtor till date.

3. The Corporate Debtor has filed reply dated 23.12.2021 submitting that during the said business engagement, on several occasions, there was delay on the part of the Applicant in providing the machinery and spare parts to the Corporate Debtor. Even then, the payment towards the said invoices had been promptly made by the Corporate Debtor to the Applicant. Despite making payment against the invoices raised by Applicant, the Applicant had instituted a false and frivolous claim petition for recovery of an amount of Rs.2,87,27,541/- on account of interest on delayed payment alongwith future interest under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006.

- 3.1 The Corporate Debtor states that it was never made aware about the fact that the Applicant was registered as a Small Scale



Industrial Unit with the Department of Industries, Malerkotla or that it had been issued any Registration/ Entrepreneur Memorandum Number. No such intimation was ever given by the Applicant to the Corporate Debtor during the course of business transactions between the parties.

3.2 Before the Micro and Small Enterprises Facilitation Council, Sangrur, a reply dated 22.1.2018 has been filed by the Corporate wherein, inter alia, it had been submitted that the Corporate Debtor, despite various issues faced by it regarding the goods supplied by the Applicant, had promptly made the payments towards the invoices issued by the Applicant, and all the invoices raised by the Applicant with effect from 29.9.2014 till 24.2.2016 i.e. total 174 invoices had already been paid by the Corporate Debtor as per the table annexed by the Applicant itself alongwith its Claim Petition.

3.3 The Corporate Debtor submits that the claim mentioned in the application shows that the amount which is claimed to be an "Operational Debt" is infact "Interest amounts on the delayed payment" and "Interest on Interest Amounts on delayed Payment". It is an undisputed fact that the amount of 174 invoices has been paid by the present Corporate Debtor. The issue in the present application thus narrows down to recovery of the interest



levied on delayed payment which is claimed by the Applicant. The Applicant failed to explain the amounts as claimed towards "Principal" and further the amounts claimed towards "Interests". The Applicant had only mentioned the amount as outstanding dues. As mentioned in column-2 of the Application, the Applicant has mentioned that the amount of Rs.1,47,65,400/- is the principal amount whereas Rs.2,30,30,146/- is the interest amount whereas in reality (and as per the calculations placed in Exhibit-P of the application) the amount of Rs.1,47,65,400/- is actually the interest on delayed payment and that the amount of Rs.2,30,30,146/- is interest on interest in delayed payment. Thus there is actually no "Principal" amount which is due and payable to the Applicant by the Corporate Debtor.

- 3.4 The Corporate Debtor further stated that as per Section 5(21) of the Insolvency and Bankruptcy Code, 2016, the "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. In the present matter, the Applicant has already received the amounts towards "provision



of goods" and thus, the amount now claimed does not in any manner whatsoever, qualify as an operational debt.

3.5 If the Applicant is relying upon the provisions of "The Micro, Small and Medium Enterprises Development Act, 2006" and is claiming as per the provisions of the "The Micro, Small and Medium Enterprises Development Act, 2006", the claim cannot be entertained by NCLT as there is a clear bar on jurisdiction as mentioned in Section 24 of the "The Micro, Small and Medium Enterprises Development Act, 2006". Had the amounts not been calculated under the provisions of Section 16 of "The Micro, Small and Medium Enterprises Development Act, 2006", it would clearly have been less than the pecuniary jurisdiction and thus the application would not have been maintainable before the NCLT.

3.6 The Corporate Debtor states that there is a pre-existing dispute pending for adjudication. I say that as envisaged in Section 9(5) (ii) (d) of the IBC in case if there is a pre-existing dispute the NCLT is required to reject the application.

3.7 The stand of the Corporate Debtor was always consistent that in absence of any clear communication by the present Applicant in respect of it being registered with the MSME, the present Corporate Debtor was neither liable to pay any amounts as



mentioned under the MSME Act nor required to suffer the rigors of litigation as initiated by the Applicant.

- 3.8 With respect to the email referred to and relied upon by the Applicant to demonstrate the acceptance of liability by the present Corporate Debtor, the Corporate Debtor submitted that the said averment is not only false and frivolous but also total misrepresentation of facts by the Applicant. After the imposition of nation-wide lockdown and in view of the fact that the conventional mode of mail communication such as department of post, courier services etc. were brought to a standstill and because the vendors of the Corporate Debtor across India could not send their invoices etc. for payments, the present Corporate Debtor with an intention to facilitate the payment process and to ensure financial well-being of its vendors had launched a dedicated email address to enable the vendors to send invoices and other statements etc. The Corporate Debtor stated that whenever any of such vendors would send any communication, the payment team would send a "customized greeting template" to such vendor and ask for the relevant documents. The said "customized greeting template" is being misrepresented and portrayed by the Applicant as an acknowledgement of debt by the Corporate Debtor. Although, it remains an undisputed fact that



the electronic mail was sent by the Corporate Debtor, none of the contents of the mentioned electronic mail gives an iota of the intentions qua acceptance of liability by the Corporate Debtor. The wordings of the mail contained nothing to be interpreted as acknowledgement of debt.

- 3.9 The first invoice was raised by the Applicant on 30.01.2016 and the period of limitation of three (3) years to recover amount under Contract as envisaged under Article 15 of The Limitation Act, 1963 expired on or about 29.01.2019. Similarly, the last invoice was raised by the Applicant on 23.03.2016 and thus, the mandatory period as required, expired on or about 22.03.2019. The present Application has been filed by the Applicant on 15.02.2021, which is clearly beyond the period of Limitation and thus, the debts as mentioned in the application have become time-barred as the present application has been filed within time. The email sought to be referred to and relied upon by the Applicant is not an acknowledgment of debt and therefore can also not be used to extend the period of limitation.

4. The Applicant filed a Rejoinder to the Reply dated 21.02.2022 stating that the Applicant had preferred a petition under section 9 of the Insolvency and Bankruptcy Code, 2016, following default by the



Corporate Debtor by non-payment of debt due in respect of 37 invoices - amounting to a sum of Rs. 1,47,65,400 - along with default interest accrued on delayed payment in respect of numerous invoices during the period from 01.04.2016 to 25.02.2020 calculated at three times of the bank rate notified by the Reserve Bank, in accordance with section 16 of the MSMED Act 2006 - amounting to a sum of Rs. 2,30,30,148 - therefore the total claim in the subject petition, in respect of which the Corporate Debtor is indebted towards the Applicant, and in default, being Rs. 3,77,95,546. Complete summary of the outstanding invoices, along with the original invoices, delivery receipts, and other transactional documents was duly included with the statutory demand notice dated 10.03.2020.

4.1 The Corporate Debtor has not notified any dispute as to its liability and debt owed to the Applicant, rather the liability stood admitted, and accordingly payments made. Further, it is clarified that the Corporate Debtor has not made payments in respect of the 37 invoices which form the subject matter of the present petition, and are also in default in respect of the interest accrued on delayed payments in respect of numerous invoices. The Corporate Debtor has not made payment in respect of the aforesaid invoices, and had sought to escape liability in its reply before the MSMEFC on the basis that it was not aware that the



Applicant was a micro, small or medium enterprise. In any case, these pleadings are of no relevance to the present petition as the proceedings stand stayed, and are, therefore, not pending at present.

4.2 The Corporate Debtor's ledger is clearly self-serving, and has not evidentiary value in the present proceedings, where it is not supported by evidence in accordance with Bankers' Book Evidence Act. In any case, the Corporate Debtor claims to have defrayed payment in respect of 174 invoices, to the exclusion of the 37 invoices which form the subject matter of the present petition.

4.3 The Applicant states that it had brought proceedings before the MSMEFC, within the relevant period prescribed under the Limitation Act, on 07.09.2017, in respect of defaults committed by the Corporate Debtor during the period from 15.03.2015 and 07.05.2016. Further, these proceedings have been stayed by the Hon'ble High Court of Punjab and Haryana on account of a challenge brought by the Corporate Debtor on the grounds of lack of requisite jurisdiction, vide its order dated 04.10.2019. Therefore, on application of section 14 of the Limitation Act, the period between 07.09.2017 and 04.10.2019 stands to be excluded.



- 4.4 The statutory demand notice, under section 8 of the Insolvency and Bankruptcy Code, 2016, was therefore issued on 10.03.2019, within the limitation period.
- 4.5 The Operational Creditor states that the Hon'ble Supreme Court of India, recently, in *Seshnath Singh Vs. Baidyabati Sheoraphuli Co- Operative Bank Ltd reported in (2021) 7 SCC 313* has held that the applicant is entitled to claim the benefit under section 14 of the Limitation Act, the delay in filing the application under sec: 7 or Sec: 9 of IBC, 2016 must be omitted, if the applicant, has spent time before the wrong court or forum in availing his legal remedy with a bonafide intention.
- 4.6 The Hon'ble Supreme Court in *M/s. Madras Petro Chem Vs. BIFR reported in (2016) 4 SCC 1* has held that when there are non-obstante clauses present in the two enactments, the latter shall prevail over the earlier enactment. Hence, the IBC being a later enactment, the proceedings before the IBC, 2016 cannot be restricted by the non-obstante clause in MSME, Act, 2006.
- 4.7 The averment regarding the questioning calculation of interest on the principal is frivolous. It is submitted that on all the invoices raised by the Applicant to the Corporate Debtor, there was a stipulation on the invoice that the interest would be payable on delay. The same was not objected to by the Corporate Debtor



Debtor and made the payments to the invoices raised by the Applicant Creditor.

5. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.

5.1 It is not undisputed that the Applicant had not notified to the Corporate Debtor at the time of supply of goods or prior to it that it is registered under MSME Act. Accordingly, we are of the considered view that the Corporate Debtor cannot be fastened with obligation to make payments in accordance with MSME Act, and consequently cannot be made liable to pay interest @ 3 times of RBI lending rate as claimed by the Applicant. As regards contentions of the Applicant that the invoices contained the stipulation of interest @24% p.a., this Bench finds that the Applicant has neither intimated about the levy of interest consequent to delayed payments nor raised any debit note.

5.2 The mail dated 15.03.2016 acknowledges the delay in making payments but it does not seek any payment for the interest as stipulated in the invoices. This bench feels that printing of the condition of interest without any consequential claim in case of delay while making follow-up for the payments cannot support the contention of the Applicant to claim interest.



- 5.3 Further, on perusal of the statement enclosed with the petition, it is noticed that the Applicant has claimed Bill No. 940, 943 and 944, as pending, however, at Pg. 962 of the petition, the said invoice is said to have been paid on 31.05.2016, 23.04.2015, 29.05.2015.
- 5.4 Also, the Applicant has claimed interest on the ledger outstanding. However, there is no stipulation for payment of compounded interest while interest on each delayed payment has already been computed. Further, the emails dated 07.05.2016, the Applicant has acknowledged that there, may be certain compliance, however, these pertain to the machine of another manufacturer.
- 5.5 The Corporate Debtor vide email dated 20.10.2016 to consider the proposal to release payments of some machines and sought confirmation of the Operation Creditor. However, there is nothing ton record to ascertain what happened to the proposal made by the Corporate debtor at the end of the Applicant.
- 5.6 Considering the above facts, this Bench is of the considered view that there exists prior dispute in relation to deficiency in the goods and claim of benefit under MSME Act. Further, there seems to be certain discrepancies as pointed out in preceding para as



regards outstanding invoice. Accordingly, this petition is not maintainable on this ground alone.

5.7 Further, the Hon'ble Apex Court has repeatedly held that IBC proceedings cannot be used for recovery proceedings or for tangential goals. The intention of the legislation was never to allow this form of abuse of the IBC by extortionists such as the Applicant to harass and intimidate legitimate corporates such as the Corporate Debtor.

5.8 In view of the above, we find that the present case is fit for dismissal under Section 9(5)(ii)(d) read with Section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016 in view of pre-existing dispute between the parties, this matter requires adjudication which is beyond the powers vested in this Bench in proceedings arising from an application filed under sec. 9 of the code and deserves to be dismissed.

**ORDER**

This Application being C.P. (IB) No. 792/NCLT/MB/C-IV/2021 filed under Section 9 of I&B Code, 2016, filed by North Agro Industries Private Limited, Operational Creditor/ Applicant against Mahindra and

Mahindra Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **Dismissed**.

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)  
//LRA-Akshata Shah//

Sd/-  
Kishore Vemulapalli  
Member (Judicial)