

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.469 of 2023
& I.A. No. 1531 of 2023**

IN THE MATTER OF:

Hydro Care Fluid Power Systems

...Appellant

Versus

Larsen & Toubro Ltd.

...Respondent

Present:

**For Appellant: Mr. Pradeep Joy and Mr. Arvind Kr. Jadoh,
Advocates.**

**For Respondent: Mr. Vivek Jain, Mr. Manish Kumar Shekhari and
Ms. Sanjana Srivastava, Advocates.**

ORDER

03.05.2023: Heard learned counsel for the Appellant. This Appeal has been filed against the order dated 13.01.2023 by which order application under Section 9 filed by the Appellant has been rejected.

2. Learned counsel for the Appellant submits that there was acknowledgment by the Respondent by email dated 25.06.2019, hence, the application was not barred by time and further the total amount of default was Rs.1,88,20,379/-, which was beyond the threshold limit.

3. We have considered the submissions of learned counsel for the Appellant and perused the record.

4. The email dated 25.06.2019, which is the basis of submission of learned counsel for the Appellant, is as follows:

Cont'd.../

“From: Pramod Kumar Das

[mailto:PramodKumar.Das@larsentoubro.com]

Sent: Thursday, June 25, 2019 7:38 PM

To: G.Lakshmanan (lakshmanang@hydrocarefluidpower.com)

lakshmanang@hydrocarefluidpower.com, ‘Shakeer’

<accounts@hydrocarefluidpower.com>

Cc: KARUNAKAR SINGH <karunakar.singh@Intpower.com>; Rita

Shivalkar <Rita.Shivalkar@larsentoubro.com>; Hemant Kumar

<Hemant.Kumar2@larsentoubro.com>; U C Rath

<Uma.Rath@larsentoubro.com>

Subject: F'W: FW: Release of pending final payment of Hydrocare Fluid Power system, Bangalore

Dear Mr. G. Lakshmanan,

As discussed during our earlier meeting held our Landmark office and the email communicated to you on 11.04.2019 by Mr. Karunakar Singh, we have recovered Rs.22.77 lakhs towards amount disallowed by Arbitration Award related to scope of work assigned to M/s Hydrocare Fluid Power system for RLBU Chhapra project.

The final amount payable to M/s Hydrocare Fluid Power System are as follows:

<i>M/s Hydrocare outstanding position as on 01.06.2019</i>	
	<i>Rs.</i>
<i>Balance as on 31.03.2019</i>	<i>7,138,971</i>
<i>Less: Amount disallowed by Arbitration Award related to M/s Hydrocare scope of work</i>	<i>2,277,000</i>
<i>Net amount payable</i>	<i>4,861,971</i>

Kindly confirm the above balances and arrange to send a full and final claim of all work order amounting to Rs.48,61,971 from RLBU Chhapra project work.

On receipt of full and final claim certificate of Rs.48,61,971, we will arrange for payment at the earliest.

Regards,

Pramod

022-41567010”

5. The email clearly indicate that on receipt of full and final claim of Rs.48,61,971/-, payment shall be made at the earliest. In response to the above email, the Appellant never submitted full and final claim for the aforesaid and after more than two years gave notice under Section 8 and filed Section 9 application in the year 2022.

6. We are of the view that the acknowledgement, if any, was at best for Rs.48,61,971/- as full and final claim. Any claim beyond the said amount cannot be said to be acknowledged on part of the Respondent and the application which was filled by the Appellant in the year 2022 cannot be entertained for amount of Rs.1,88,20,379/- for which there can be no acknowledgment. The Adjudicating Authority has also rightly observed that the amount relate to the invoices for period from 23.10.2010 to 12.06.2013 for which application under Section 9 filed in the year 2022 was clearly barred by time. Insofar as submission of learned counsel for the Appellant that in the email dated 25.06.2019, deduction of Rs.22,77,000/- was wrongly made, said issues can be raised by the Appellant in a proceeding as per terms of contract

and the said issues cannot be decided in a Section 9 application, which will come in the domain of pre-existing dispute. We, thus, are of the view that no error has been committed by the Adjudicating Authority in rejecting Section 9 application. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Archana/nn