

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

**CP (IB) No. 791/MB-V/2021**

Under Section 9 of the I&B Code, 2016

In the matter of:

**Real Link Engineering India Private  
Limited**

[CIN: U02919TZ2005PTC012148]

...Operational Creditor/Applicant

V/s

**L&T Valves Limited**

[CIN: U74999MH1961PLC012188]

...Corporate Debtor/Respondent

**Order Dated: 14.06.2023**

*Coram:*

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. R. Rajesh, Advocate.

For the Respondent(s) : Mr. Rashid Boatwalla a/w  
Ms. Samiksha Rajput, i/b  
Manilal Kher Ambalal & Co,  
Advocates.

**ORDER**

*Per: Kuldip Kumar Kareer, Member (Judicial)*

1. This is an application bearing C.P. (IB) No. 791/MB-V/2021 filed by Real Link Engineering India Private Limited, the **Operational Creditor/Applicant**, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency

Resolution Process (CIRP) against L&T Valves Limited (**hereinafter Corporate Debtor**) for claiming total outstanding of Rs.1,18,57,274/- (Rupees one crore eighteen lakh fifty-seven thousand two hundred seventy-four only)

2. The Default as mentioned in Part-IV occurred on 28.04.2021. The Petition was filed on 29.07.2021.
3. The submissions of the Operational Creditor is that:
  - 3.1. The Operational Creditor supplied valves to the Corporate Debtor and had been doing business with the Corporate Debtor for past four years. The supplies were made on time, without any delay, as admitted by the Corporate Debtor, and it was also received by the Corporate Debtor without any complaint.
  - 3.2. The Operational Creditor supplied the material as per the terms and conditions agreed with the Corporate Debtor and the materials so supplied were received by the Corporate Debtor to their complete satisfaction. Hence, there is no dispute with regard to its quantity, quality and related specifications.
  - 3.3. The Operational Creditor had supplied 132 nos. of rough castings after the completion of inspection by the inspector appointed and authorised by the Corporate Debtor at the factory site of the Corporate Debtor. The Corporate Debtor had issued a debit note dated 19.12.2020 and accepted the quantity of the material as acceptable standards for the 132 nos. of the machined castings sent by the Operational Creditor.
  - 3.4. Towards the regular supply of material by the Operational Creditor to the Corporate Debtor during the period 2019, a sum of Rs.1.18

crore is due and outstanding from the Corporate Debtor. The Operational Creditor had raised invoices dated 18.02.2021, 25.02.2021 and 13.04.2021 etc. upon the Corporate Debtor.

- 3.5. The Corporate Debtor has admitted the liability in its website portal up to Rs.31,01,323/- and a further sum of Rs.87,55,951/- in the form of Debit Notes, appearing in the GST Portal.
4. The Operational Creditor had issued a Demand Notice dated 16.06.2021 in Form 3 upon the Corporate Debtor for claiming total outstanding of Rs.1,18,57,274.13, payable within 10 days from the receipt of this Demand Notice. The Corporate Debtor has replied to the said Demand Notice dated 16.06.2021 denying the liability of debt and disputed the claim amount of the Operational Creditor.

**Reply of the Corporate Debtor:**

5. The Corporate Debtor has filed its Affidavit-in-Reply, dated 02.08.2022, and submits as under:
  - 5.1. The Operational Creditor has failed to place on record the following document:
    - 5.1.1. Communication evidencing existence of any dispute in relation to the quality of goods supplied, complaints and inspection reports of the Quality Control Team of the Corporate Debtor prior to the issuance of Demand Notice;
    - 5.1.2. Legal Notice dated 05.05.2021 issued by the Operational Creditor prior to the issuance of Demand Notice in Form-3;
    - 5.1.3. First Demand Notice in Form-3 dated 11.05.2021 issued by the Operational Creditor;

- 5.1.4. Reply dated 21.05.2021 issued by the Corporate Debtor in response aforementioned Legal Notice and Demand Notices succinctly capturing the pre-existing dispute between the Operational Creditor and the Corporate Debtor;
- 5.1.5. The invoices raised in relation to 132 castings, in respect of which the Corporate Debtor has alleged non-payment, were never annexed to the both the Demand Notice, as allegedly issued by Operational Creditor;
- 5.1.6. Copies of Debit Notes based on which huge sum of monies have been claimed.
- 5.2. There was a dispute regarding the material supplied by the Operational Creditor, even prior to the issuance of the Demand Notice. Therefore, the claim of the Operational Creditor is unsustainable and does not amount to an '*operational debt*' under the Code.
- 5.3. The Application filed by the Operational Creditor is not maintainable at the threshold, as it fails to demonstrate as to how the Operational Creditor has arrived at an amount of Rs.1,00,00,000/- to meet the minimum threshold criteria, as specified under the Code for initiation of CIRP.
- 5.4. The Debit Note issued in the matter itself proves that the Corporate Debtor has to recover the money from the Operational Creditor on account of the sub-standard material provided by it.
- 5.5. There has been pre-existing dispute between the parties prior to issuance of Demand Notice. In fact, the Operational Creditor itself

addressed a legal notice on 05.05.2021 raising a dispute with the Corporate Debtor.

- 5.6. The terms and conditions pertaining to specification of the material exclusively required by the Corporate Debtor were enumerated in the Purchase Order. The Corporate Debtor also informed the Operational Creditor that considering the criticality of the projects, time was the essence of contract. Hence, any delay in providing the requisite material would escalate the cost of project for the Corporate Debtor. It is only thereafter that the Operational Creditor unconditionally agreed that it would abide by the terms and conditions, as specified by the Corporate Debtor.
- 5.7. The Purchase Order executed between the Operational Creditor and the Corporate Debtor was that the Operational Creditor would provide free replacement of the material in case the same is rejected by the Corporate Debtor or if the same is not in consonance with the requirements of the Corporate Debtor. The relevant extract of the Purchase Order dated 10.09.2019 are enumerated hereinbelow: wherein it was clearly mentioned that

*“...In case of rejection, immediate free replacement shall be made ...”*

- 5.8. The Operational Creditor supplied requisite material to the Corporate Debtor which was then transferred to S&S Technologies. However, upon the examination of the material, certain discrepancies were pointed out by S&S Technologies to the Corporate Debtor in relation to the defects observed in the material supplied. S&S Technologies, inter alia, stated that material supplied by the Operational Creditor was not as per the Corporate Debtor specific drawings and technical specifications, as agreed upon by

the Operational Creditor. This was communicated to the Corporate Debtor by S&S Technologies vide email dated 09.01.2020. The Corporate Debtor had communicated the same to the Operational Creditor vide its email dated 10.01.2020.

- 5.9. Thereafter, the personnel from the Quality Control unit of the Operational Creditor personally visited the S&S Technologies Machine shop and after conducting a verification exercise admitted that there were discrepancies observed in relation to the material supplied. The Operational Creditor vide email dated 13.01.2020 addressed to the Corporate Debtor also confirmed the same.
- 5.10. The Managing Director of the Operational Creditor also visited the office of the S&S Technologies on 21.01.2020 to verify the discrepancies in the material and reassured the Corporate Debtor that he would provide feedback on or before 24.01.2020 with regard to shortcomings observed and if the same was fit for consumption. The discussion transpired during the meeting held on 22.01.2020 was duly recorded by way of a Minutes of Meeting, which was shared with the representative of the Operational Creditor over email. The representatives of the Operational Creditor were also reminded of the same through exchange of emails including the email dated 24.01.2020.
- 5.11. However, the Operational Creditor failed to communicate its feedback to the Operational Creditor. Therefore, the Corporate Debtor addressed emails on 24.01.2020 and 29.01.2020 seeking feedback from the Operational Creditor to proceed ahead with the available material for the project.
- 5.12. The Operational Creditor responded on 30.01.2021 confirming the discrepancies in the material supplied by it to the Corporate Debtor

and informed the Corporate Debtor that the dimension results for the same would be communicated once 'fettling' is done. The Operational Creditor failed to communicate the action plan and feedback on the rectification of the defects in the material. The Corporate Debtor addressed emails once again on 07.02.2020 and 11.02.2020 requesting for feedback from the Operational Creditor. However, the Operational Creditor failed to communicate its feedback despite lapse of 47 days.

- 5.13. The Corporate Debtor addressed an email on 25.08.2020 to the Operational Creditor conveying that S&S Technologies was no longer willing to wait for the Operational Creditor to rectify the problem. The Operational Creditor, on 25.08.2020, addressed an email to the Corporate Debtor admitting that though there were defects in the material supplied by it, they were in the process of taking steps to rectify the issue related to casting defects noted by the Corporate Debtor.
- 5.14. The Corporate Debtor observed/identified defects/ shortcomings on several occasions in the casting supplied by the Operational Creditor. These defects in the casting have been effectively admitted by the Operational Creditor. The Operational Creditor had reworked and made suitable modifications to the defective castings and the same were rejected by the Corporate Debtor on 28.10.2020.
- 5.15. Considering the shortcoming in the material, the Corporate Debtor, as per the terms of the purchase order, rejected the material provided by the Operational Creditor and raised a debit note vide invoice no. 9120000239 for Rs.35.74 lakh. This behaviour of the Operational Creditor resulted into loss of reputation to the

Corporate Debtor and the Corporate Debtor addressed an email on 19.04.2021 to the Operational Creditor communicating the same.

- 5.16. On 21.04.2021 and 28.04.2021, three more quality notification complaints, pointing out defects in 20 body casting “8” 133 Gr WCB and another quality notification complaint for defects in 83 body casting “8” 133 Gr WCB supplied by the Operational Creditor were raised by the Corporate Debtor. Debit Note bearing invoice no. 882100078 and 9121000122 were also raised in this regard.
- 5.17. Despite in default of the terms and conditions as per the Purchase Order as stated hereinbefore, the Operational Creditor wrongly issued a legal/dispute notice on 05.05.2021 calling upon the Corporate Debtor to release payment of outstanding amount of Rs.1,1,69,800.11 and did not take the material returned by the Corporate Debtor. The Corporate Debtor vide its response to the legal notice and the Demand Notice dated 21.05.2021 refuted the outstanding amount, as falsely averred by the Operational Creditor.
- 5.18. The Operational Creditor thereafter issued another letter on 31.05.2021 calling upon the Corporate Debtor to make payment of Rs.1.18 crore for the material supplied. The Corporate Debtor, once again on 11.06.2021, denied the frivolous allegations made and amount claimed in the Demand Notice.
- 5.19. The other averments made in the Petition have been denied as wrong and in the end, a prayer for dismissal of the Petition has also been made.

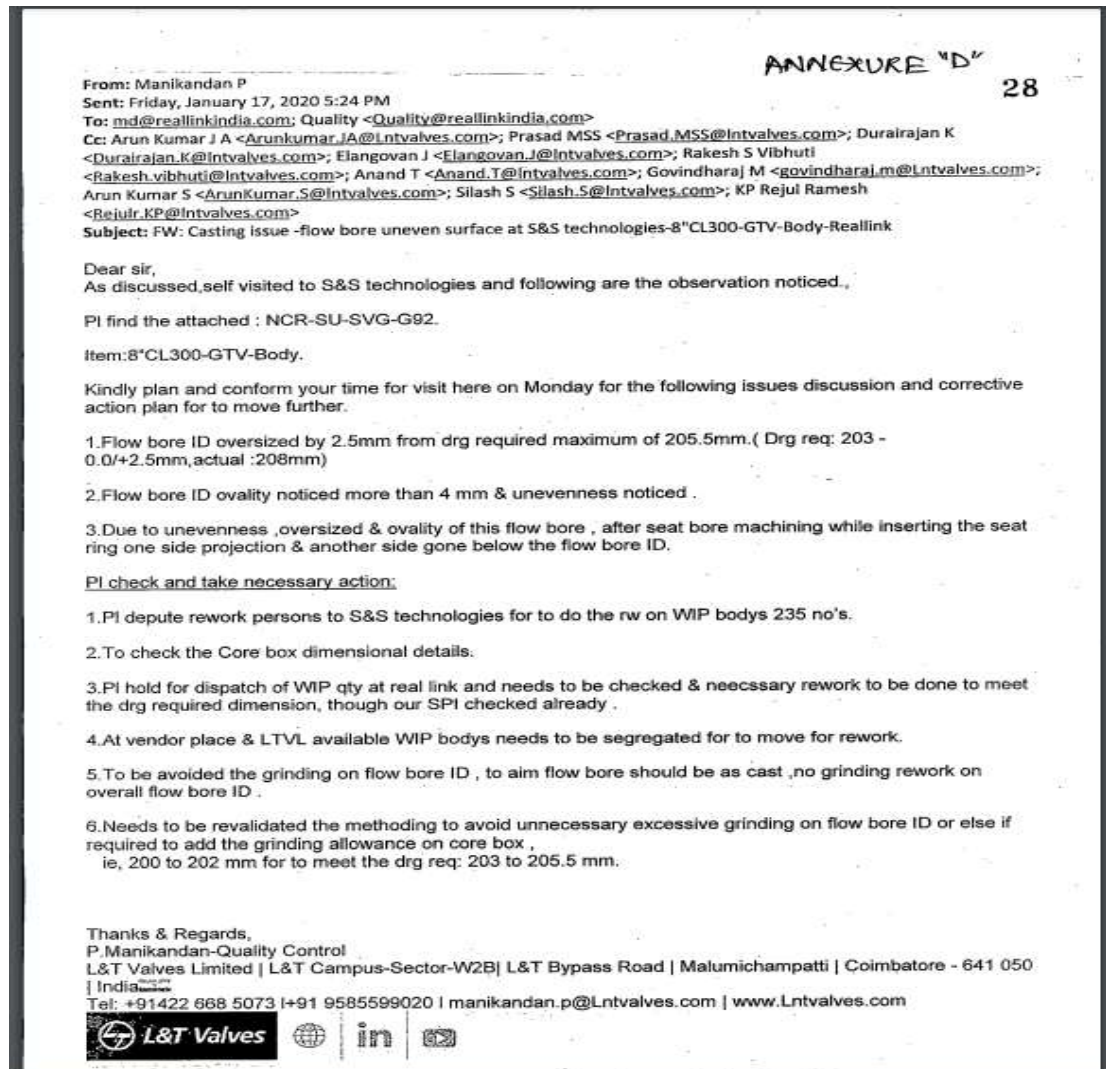
---

**Findings/Observations:**

6. We have heard the Counsel for the Parties and have gone through the record.
7. During the course of arguments, it has been contended by the counsel for the Corporate Debtor that there is a clear-cut pre-existing dispute which becomes evident from the correspondence exchanged between the parties even before the issuance of the demand notice dated 16.06.2021. The said dispute was with regard to the quality of goods supplied by the Operational Creditor. In this regard, the Counsel for the Corporate Debtor referred to Purchase Order No. 10178860 wherein it is clearly mentioned that in case of rejection, immediate free replacement shall be made by the Operational Creditor.
8. The counsel for the Corporate Debtor has further pointed out that as per the email dated 09.01.2020 sent by S & S quality (a contractor of the Corporate Debtor) stating hereunder:

*8"300 WCB GT body castings from L&T against duqm order, in that body casting flow bore uneven surface observe (flow bore ovality) and guide pad different design.*
9. The Counsel for the Corporate Debtor has further referred to email dated 10.01.2020 (Annexure-B2) sent by the Corporate Debtor to the Operational Creditor wherein there is a reference to some discussions held between the parties on 09.01.2020 with regard to uneven bore observed in 8"300 EN2 bodies i.e. the goods supplied by the Operational Creditor.
10. The Counsel for the Corporate Debtor has further referred to email dated 17.01.2020 sent by the Corporate Debtor to the Operational Creditor seeking confirmation of its visit for corrective action plan. The relevant

part of the email is being reproduced as under:



11. The Counsel for the Corporate Debtor has further to Annexure-E which are Minutes of the meeting held between the Corporate Debtor, S.S Technologies and the Operational Creditor wherein also the detailed discussions are shown to have been held amongst the parties with regard to the defects in the products supplied by the Operational Creditor. Annexure-F1 is another mail addressed to the Operational Creditor seeking further correction action plan on WIP available at S.S Technologies. Annexure F-2 is another email dated 29.01.2020 on the

same subject. Similarly, in the email Annexure H1 dated 07.02.2020 addressed to the Operational Creditor, certain issues with regard to the products supplied by the Operational Creditor have been raised. Therefore, according to the Counsel for the Corporate Debtor, there has been a pre-existing between the parties as the products supplied by the Operational Creditor were defective in nature and the defects were neither rectified nor the goods were replaced and, on this ground alone, the Petition deserves to be dismissed.

12. On the other hand, the Counsel for the Operational Creditor has argued that there has been no such dispute with regard to the quality of the products and the defects, if any, were removed to the satisfaction of the Corporate Debtor and, therefore, the present Petition deserves to be admitted.
13. Having thoughtfully considered the rival contentions of the Counsel for the Parties, we are of the considered view that the demand notice on Form-3 in this case was issued on 11.05.2021 whereas the above referred correspondence pointed out by the Counsel for the Corporate Debtor was exchanged between the parties much prior to the demand notice. As stated above, the said correspondence was exchanged in the year 2020. Minute perusal of the correspondence clearly reveals that there were serious issues with regard to the quality of the products supplied and there were major defects as the goods supplied by the Operational Creditor were uneven, oversized and were not of the desired shape and dimensions.
14. It has also been pointed out by the Counsel for the Corporate Debtor that in the purchase order itself, it was clearly mentioned that in case of rejection of goods, the Operational Creditor will provide free replacement. On receipt of the goods i.e. 235 number of body castings

were sent to M/s S & S Technologies Coimbatore, a venture of the Corporate Debtor who subsequently informed that there was uneven bore in 8”300 body castings which was further brought to the notice of the Operational Creditor along with the dimensional report and photographs as early as on 09.01.2020. In reply to the notice dated 21.05.2021 also, it has been clearly stated by the Corporate debtor that despite repeated requests made to the Operational Creditor, the latter has not responded with corrective action nor the defects in the products were rectified. Thus, it is evident that there was a dispute between the parties with regard to the quality of the products supplied by the Operational Creditor.

15. In the light of these facts which clearly indicate that there was pre-existing dispute between the parties much prior to the issuance of the demand notice and that being so, it is not a fit case for admission under Section 9 of the Code and, therefore, **deserves to be dismissed.**

16. Accordingly, the Petition under Section 9 of the Code is hereby **dismissed**, being devoid of merit.

**SD/-**  
**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

**SD/-**  
**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**