

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 9/Chd/Chd/2021
Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

Marsh Automation Private Limited
Registered Office:
98/25A, Hadapsar Industrial Estate,
Pune: 411013

...Petitioner-Operational Creditor

Vs.

Spray Engineering Devices Limited
Registered Office:
Plot No.25, Industrial Area, Phase II Chandigarh UT
Chandigarh-160002.
CIN No. U00000CH2004PLC027625

...Respondent-Corporate Debtor

Judgment delivered on: 20 .11.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-
Operational Creditor : Mr. Devansh Khanna, Proxy Advocate.
Mr. S.V. Abhang, Advocate.

For the Respondent-
Corporate Debtor : Mr. Nikhil Gupta, Advocate
Ms. Manpreet Kaur, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Marsh Automation Private Limited** through Director, Mr. Charudutta Vinod Mashalkar (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **Spray Engineering Devices Limited (for brevity 'Corporate Debtor' / 'Respondent')**. Board Resolution dated 28.09.2020 authorizing the signatory is enclosed and marked as Annexure-A at page No.61.

2. The Corporate Debtor, namely, **Spray Engineering Devices Limited**, is a Company incorporated on 08.11.2004 under the provisions of the Companies Act, 1956 with CIN No. U00000CH2004PLC027625 with its registered office at Registered Office: Plot No.25, Industrial Area, Phase II Chandigarh UT, Chandigarh-160002. Hence, the territorial jurisdiction lies with this Adjudicating Authority. A copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure-P.

3. The facts of the case, briefly, as stated in the petition are that the present petition pertains to various purchase orders issued by the corporate debtor for its various sites to the operational creditor in terms of which the Operational Creditor had supplied products such as electric actuators, panels, distribution panels. Accordingly, invoices were raised including GST which is paid by Operational Creditor and the credit has been availed by Corporate Debtor, out of the entire amount due as per the invoices, debit notes etc, an amount of Rs. 1,19,60,475/- has been paid by the Corporate Debtor but an aggregate amount of Rs.74,59,088/- against invoice Nos G-0095, G-0097, G- 0098, G-0099, G-0100, G-110 and debit notes bearing

numbers GD-007 and GD- 008 was not paid. The Products were supplied as per the said Purchase Orders and invoices were issued by Operational Creditor. Upon supply of the Products, the Corporate Debtor raised the requirement of Engineers to be deputed to do the automation work for the said project site, Operational Creditor accordingly sent the engineers to M/s Shree Siddheshwar Sahakari Sakhar Karkhana Ltd, the plant was going in commissioning on 01/11/2017. The Corporate Debtor had issued cheques in favour of the Operational Creditor against the invoices, in accordance to their due dates, the Operational Creditor presented the cheques for payment however, they were dishonored. Upon follow up the Corporate Debtor vide email dated 18/12/2017 stated that there were certain issues due to which the payment was stopped and that once the problem was resolved the payment shall be made, and the Corporate Debtor admitted the outstanding amount payable to Operational Creditor. However, the Corporate Debtor made false and baseless allegations to avoid making the payment of the outstanding dues such as they were losing customers and that their payments were on hold and merely asked the Operational Creditor to set the situation right. Upon which the operational Creditor vide email dated 19/12/2017 replied stating in details exactly what part the Operational Creditor plays and how operational Creditors are not responsible and cannot be held responsible for the mismanagement on the end of the Corporate Debtor. The other cheques given by the Corporate Debtor were also dishonored upon presentment. The Operational Creditor did not initiate any legal proceedings against Corporate Debtor considering the request made by the Corporate Debtor and the long-standing association. The Corporate

Debtor requested, assured, and promised to pay off the outstanding dues debts within a short time. The Operational Creditor and the Corporate Debtor held a meeting on 13/10/2018 and thereby, the Corporate Debtor admitted the outstanding dues and promised to clear them at the earliest. The Corporate Debtor undertook to pay an amount of Rs. 10,00,000/- in a week's time from 13/10/2018, and the Operational Creditor agreed to send engineers to the M/s Siddheshwara SSK Ltd and M/s BCML Babhnan with spares. The Operational Creditor also agreed to take the unused material/products back from M/s Chadha Sugar against E-1 invoicing done to the Corporate Debtor at Kiriafghana Project and the Corporate Debtor agreed to arrange for the proper return along with necessary documents so that the Operational Creditor can claim GST benefits. However, the appropriate invoicing has not been done by the Corporate Debtor due to which, the Operational Creditor has not yet received the unused material/products back. The Corporate Debtor has not made the payment as agreed in the MoM dated 13/10/2018 and therefore the present claim has arisen. The debt of amount of Rs. 74,59,088/- remains unpaid till date.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default principle amount is Rs. 74,59,088/- (Rupees Seventy-Four Lakhs Fifty Nine Thousand Eighty-Eight Rupees Only) and interest thereon @ 18% p.a. on the same amounting to Rs.37,93,065 till the date of filing of the petition and further interest @ 18% p.a. till realization of entire amount. The default occurred on 13.10.2018 i.e. when the minute of meeting was held between M/s SEDL & M/s Marsh Automation. Copy of Purchase Orders (Annexure-B), Invoices and Debit Notes (Annexure-C),

Post Dated Cheques (Annexure-D), Copy of MoM of Successful Commioning (Annexure-E), Letter of Credit (Annexure-F) Computation (Annexure-M), Ledger Accounts (Annexure-N) and Bank Statements (Annexure-O) are attached with the main petition.

5. A demand notice is stated to be issued by the operational creditor on 02.01.2020 through email (Annexure-I) and on 15.11.2019 through registered post, delivery report and tracking receipts are attached at Annexure-L of the petition. The corporate debtor gave a reply dated 11.02.2020 to demand notice in which it has been submitted that there was no dispute prior to 10.10.2017 and the payments were regularly made to you against the supplied material. The default of eight invoices between the period 10.10.2017 to 02.11.2017 is claimed for a sum of Rs.76,41,453/- out of which operational creditor have received the payment of Rs.1,82,365/-. The electrical actuators supplied by the operational creditor against those invoices were defective. Further, the operational creditor claims that the payment of Rs.26,47,969/- through a letter of Credit-bearing No.62051LCDA160263 dated 22.12.2016 has not been made by SEDL is completely false and misleading as the said amount was credited to your account on 22.06.2017 by the Bank of India which is evident from your own Ledger account statement for the year 2017-2018 attached with demand notice. The CEO of SEDL clearly mentioned regarding the stoppage of payment of cheques in his e-mail dated 14.12.2017 that due to the severe failure in the technology of Marsh Automation, customers have stopped payments as well as removed the actuators. A sum of Rs.2,26,46,321.74/- is due on operational creditor which have been debited by various sugar

mills on account of damages suffered by them because of the defective electrical actuators. The defective actuators supplied are either lying packed or removed/replaced after being uninstalled from the respective sugar mills. The total cost of the Electrical Actuators which have been rejected and which are to be taken back from the SEDL comes to Rs.1,17,89,133/-.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Diary No 01817/2 dated 11.04.2022. The learned counsel for the respondent/corporate debtor raised an objection about the maintainability of the petition on the threshold limit. The short written submissions have been filed by petitioner-operational creditor vide Diary No. 01817/4 dated 25.07.2022 and by respondent corporate debtor vide diary No.0187/3 dated 20.07.2022.

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

8. The issue for consideration is whether the operational debt is below the threshold limit of Rs. One crore? It is pertinent to note that in the demand notice dated 02.01.2020, it is mentioned by the petitioner that the respondent/corporate debtor i.e. Spray Engineering Devices Ltd (in short SEDL) had placed orders to purchase various products such as eclectic actuators, panels, distribution panels, etc upon MAPL for its project carried on at various sites. Accordingly, MAPL has supplied the said products and raised its invoices including GST which is paid by MAPL and the credit has been availed by SEDL, MAPL has raised the said invoices bearing Nos.0212, G-0047, G-0048, G-0053, G-0076, G-0095, G-0097, G-0098,

G-0099, G-0100, G-0110, G-0272, 0298, and 0299 aggregating to Rs.1,19,60,475/- has been paid by the SEDL but an aggregate amount of Rs.74,59,088/- against invoice Nos.G-0095, G-0097, G-0098, G-0099, G-0100, G-0110. However, perusal of invoices No.Nos.G-0095, G-0097, G-0098, G-0099, G-0100, and G-0110 copies of which are placed on record in the main petition, volume-I, pages 96 to 119 shows that there is no stipulation regarding the payment of interest on delayed payment. The respondent has relied on the judgment of Hon'ble NCLAT: **Mr. Prashat Agrawal. v. Vikash Parasrampuria and Anr. Company Appeal (AT) (Ins) No.690 of 2022 dated 15.07.2022**, in which it is held that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself. It is noted that the total principal debt amount of Rs.97,87,220/- along with interest the total debt makes the total outstanding as Rs.1,60,87,838/-. Thus, the total debt outstanding of OC is above Rs.1 crore as per the requirement of Section 4 IBC read with notification No. S.O 1205 (E) dated 24.03.2020 (supra), and meets the criteria of Rs.1 crore as per Section 4 of IBC and application if therefore maintainable in the present case. However, the said judgment is distinguishable as already noted that there is no interest clause/condition on delayed payment in the invoices mentioned above in the present case whereas in the case before Hon'ble NCLAT there was clearly mentioned under terms and conditions that interest will be charged @ 18% plus GST.

9. The present petition under Section 9 has been filed by the petitioner on 12.02.2021 vide diary No.01817. Therefore, the learned counsel for the

respondent has placed Reliance upon the judgment of the Hon'ble Appellate Authority in the case of ***Jumbo Paper Products vs. Hansraj Agrofresh Put. Ltd. (Company Appeal (AT) (Ins) No. 813 of 2021 dated 25.10.2021]*** wherein the Hon'ble NCLAT held thus:

"10. The other judgments cited by learned Counsel for Appellant broadly lay down that any statute/ law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute. It is seen that notification dated 24.3.2020 makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.2020 even if debt is of a date earlier than 24.3.2020. Since the application under section 9 which is the subject matter of this appeal was filed on 13.09.2020, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the present case."

10. The learned counsel for the respondent has also placed reliance upon the judgments of this Adjudicating Authority, in the case of ***M/s Wanbury Ltd. Vs. M/s Panacea Biotech Ltd, CP No.8/2016, RT No.9/Chd/Pb/2017*** and ***CBRE South Asia Private Limited Vs. M/s. United Concepts Solutions Private Limited, (IB) No.797/(ND)/2021*** passed by ***Hon'ble NCLT, New Delhi Bench, (Court-II) dated 19.01.2022*** in both these judgments, it has been held that if principal debt as claimed by the applicant/operational creditor is less than the threshold limit of Rs. One crore, the application under Section 9 of the IBC is not maintainable and liable to be dismissed.

11. Turning to the facts of the case in hand. The present application u/s 9 has been filed by the petitioner on 12.02.2021 vide diary No.01817 after notification No.S.O.1205(E) dated 24.03.2020. Thus, the threshold limit of Rs. 1 Crore. Here the principal amount claimed is Rs. Rs. 74,59,088/- (Rupees Seventy-Four Lakhs Fifty Nine Thousand Eighty-Eight Rupees

Only) which is the threshold limit of Rs. 1 Crore. There is no clause or condition for interest to be paid on delayed payment. Thus, the present application filed under Section 9 of the Code is not maintainable under Section 4 of IBC being below the threshold limit. Consequently, the present application under Section 9 is rejected and dismissed, however no order as to costs.

sd/-

(Subrata Kumar Dash)
Member (Technical)

November 20 , 2023
SD

sd/-

(Harnam Singh Thakur)
Member (Judicial)