



**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**  
**(Special Bench)**

**Item No.-203**  
IB-583/ND/2022

**IN THE MATTER OF:**

M/s. Deshwal Waste Management Pvt. Ltd.

.... **Applicant**

**Vs.**

M/s. LG Electronics India Pvt. Ltd.

.....**Respondent**

**SECTION**

U/s 9 IBC

**Order delivered on 28.07.2023**

**CORAM:**

**SHRI P.S.N PRASAD,**  
**HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets. IB-583/ND/2022  
is **dismissed**.

**Sd/-**  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (T)**

**Sd/-**  
**(P.S.N PRASAD)**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V, NEW DELHI**

**IB NO. 583/(ND)/2022**

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**IN THE MATTER OF:**

**M/s Deshwal Waste Management Pvt. Ltd.**

Second Floor, SCO 81, Main Market,  
Sector 17A, Gurgaon, Haryana-122001

**...Operational Creditor**

**Versus**

**M/s LG Electronics India Pvt. Ltd.**

A-24/6 Mohan Cooperative Industrial Estate,  
Mathura Road, New Delhi-110044

**...Corporate Debtor**

**Order Delivered on: 28.07.2023**

**CORAM:**

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**Appearances (through Video Conferencing/physical hearing)**

**For the Applicant:** Mr. Ashish Kothari, Ms. Sakshi Agarwal, Advs.

**For the Respondent:** Mr. Akshat Hansaria, Mr. Tanmay Arora, Advs.



## O R D E R

### PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

- 1.** This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s Deshwal Waste Management Private Limited ('Operational Creditor')** duly authorized for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against **M/s LG Electronics India Private Limited ('Corporate Debtor')**.
- 2.** **M/s Deshwal Waste Management Private Limited** (Operational Creditor) is a Company registered under the Companies Act, 1956 [CIN- U74900HR2013PTC049334] having its registered office at Second Floor, SCO 81, Main Market, Sector 17A, Gurgaon, Haryana-122001. **M/s LG Electronics India Private Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN- L74900DL1997PLC084548], having its registered office at A-24/6 Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044. Also, at 20-A, Shivaji Marg, Moti Nagar, New Delhi-110015. The Corporate Debtor has Authorized Share Capital of Rs. 115,00,00,000 (One Hundred Fifteen Crores) and Paid-Up Share Capital of Rs 113,12,87,320 (One Hundred Thirteen Crores Twelve Lacs Eighty-Seven Thousand Three Hundred Twenty).
- 3.** The present Petition was filed on 04.06.2022 before this Adjudicating Authority by Mr. Anil Kumar Narang, the Authorised Representative of the Operational Creditor's Company, duly authorized to initiate Corporate Insolvency Resolution Process (*"CIRP"*) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (*"Code"*) by Board of Directors vide Board Resolution dated 22.04.2022. The total



amount due as on 02.03.2022 is claimed to be Rs 13,94,35,941.41 (Rupees Thirteen Crores Ninety-Four Lacs Thirty-Five Thousand Nine Hundred Forty-One and Forty-One Paise). The principal amount is stated to be Rs. 12,78,34,882.41/- (Rupees Twelve Crores Seventy-Eight Lakhs Thirty-Four Thousand Eight Hundred Eighty-Two and Forty-One Paise) and the Interest Amount calculated till 25.05.2022 at 18% p.a. is Rs. 1,16,01,059/- (Rupees One Crore Sixteen Lakhs One Thousand Fifty-Nine). The ***date of default*** is stated to be on 02.03.2022.

**4. *Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***

- a) The Operational Creditor is a company engaged in the business of collection, dismantling & recycling of E-waste/Obsolete or scrapped Electronics/Electrical Equipment's and components. The Operational Creditor is also registered as a "small enterprise" with the Ministry of Micro, Small & Medium Enterprise (MSME) under Udyog Aadhaar Number HR05B0000188. The Corporate Debtor is one of the leading manufacturer and marketer of LED Televisions, Air-conditions, Microwave-Ovens, Washing Machines, Refrigerator, Water Purifier, Audio Equipment's and other electronic home appliances.
- b) An "Agreement for management of Extended Producer Responsibility" (The Agreement) was executed between the parties on 05.08.2019. The "Extended Producer Responsibility" has been imposed on every electronic manufacturer under the E-Waste Management (EWM) Rules, 2016 under which they have to mandatorily carry out the management of the E-waste, as per the collection targets based on sales of Electrical and Electronic



Equipments (EEE) made by them. The Operational Creditor duly collected and recycled E-waste on behalf of the Corporate Debtor pursuant to the Agreement.

- c) On 24.06.2021 severe fire broke out at the Plant of the Operational Creditor located at Plot No.215, Sector 4 IMT Gurgaon due to which all records and material pertaining to the e-waste collected and recycled by the Operational Creditor on behalf of Corporate Debtor were destroyed completely. The said incident was widely reported in several newspapers and information regarding the same was duly given to the Police and the Haryana State Pollution Control Board (“HSPCB”) and Fire Department.
- d) However, the Corporate Debtor was well aware of the quantity of E-waste collected and recycled by the Operational Creditor on its behalf during FY 2020-21. The Corporate Debtor has made a self-declaration before the Central Pollution Control Board (CPCB) which itself declared that the Operational Creditor had collected and recycled 7,288.910 Mt. of e-waste for the Corporate Debtor for the FY 2020-2021.
- e) It is submitted that the Corporate Debtor has already taken advantage of the e-waste collected by the Operational Creditor to fulfil its statutory obligations. Further, by declaring that the Operational Creditor has collected and recycled 7,288.910 Mt. of e-waste, the Corporate Debtor has avoided penalty for non-compliance of the e-waste norms.
- f) It is pertinent to mention that in addition to 7,288.910 Mt. collected and recycled by the Operational Creditor in Financial



Year 2020-21, the Operational Creditor had also collected and recycled a total quantity of 1746.92 Mt. for the Corporate Debtor from 01.04.2021 to 23.06.2021. However, the records of the same were destroyed in the fire of 24.06.2021. Also, due to such fire outbreak, there was a little delay on the part of the Operational Creditor in raising invoices for the FY 2020-21 as well as for FY 2021-22.

- g) It is further submitted that in addition to the abovementioned invoices, the Corporate Debtor was also liable to make payments against certain existing invoices for the FY 2020-21 against which only part payments were made by the Corporate Debtor. The Operational Creditor vide email dated 01.03.2022, requested the Corporate Debtor to pay all the pending and freshly issued invoices for the FY 2020-21 and 2021-22. However, the Corporate Debtor vide its reply email dated 02.03.2022 refused to pay the said invoices unless the Operational Creditor furnishes all documents in relation to the e-waste collected by the Operational Creditor on behalf of the Corporate Debtor, irrespective of the knowledge as to the destruction of the documents in the fire outbreak dated 24.06.2021.
- h) The Operational Creditor vide reply to email dated 02.03.2022, reminded the Corporate Debtor of the Force Majeure event and also assured to provide the documents which could be retrieved online or duplicate computer-generated copies whereof could be obtained to satisfy the Corporate Debtor and requested the Corporate Debtor to release payments of the pending invoices immediately.



- i) The total value of the unpaid invoices raised by the Operational Creditor is Rs. 18,94,88,251.41 (Rupees Eighteen Crores Ninety-Four Lacs Eighty-Eight Thousand Two Hundred Fifty-One and Forty-One Paise). The Corporate Debtor has made payment of only Rs. 5,85,20,521 (Rupees Five Crore, Eighty-Five Lakhs, Twenty Thousand, Five Hundred and twenty-One). Furthermore, certain Credit Notes amounting to Rs. 31,32,848 (Rupees Thirty-One Lakhs, Thirty-Two Thousand, Eight Hundred and Forty-Eight) were also issued by the Operational Creditor to the Corporate Debtor against the various invoices issued by the Operational Creditor. Thus, after adjusting the already paid amount of Rs. 5,85,20,521 and Credit Notes of Rs. 31,32,848, a total amount of Rs. 12,78,34,882.41 (Rupees Twelve Crores, Seventy-Eight Lakhs, Thirty-Four Thousand, Eight Hundred Eighty-Two and Forty-One Paise) is outstanding, owing and due from the Corporate Debtor to the Operational Creditor as on date of the statutory notice under Section 8(1) of the Code.
- j) Despite repeated requests by the Operational Creditor, the Corporate Debtor did not pay the outstanding amount and therefore, the Operational Creditor issued the demand notice dated 26.04.2022 under Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to which the Corporate Debtor issued an evasive and false reply on 06.05.2022. The Corporate Debtor has not disputed the fact that the Operational Creditor has recycled e-waste of 7,288.910 Mt. for the FY 2020-2021, which itself makes it clear that the question of any 'pre-existing dispute' between the parties does not arise.



- k) That the Corporate Debtor is mischievously taking the advantage of the fire incident by claiming that no amount is to be paid to the Operational Creditor due to non-production of supporting documents. It is further contended that if the Corporate Debtor could make a declaration to Central Pollution Control Board (CPCB) regarding e-waste collected by the Operational Creditor to fulfil its liability without seeking any supporting documents, then it is not understood as to how it can avoid making payments for the said quantities declared to CPCB for lack of supporting documents.
- l) That the Corporate Debtor has taken a defense that it was unable to verify the quantities due to lack of supporting documents. However, the said defense is frivolous as the quantities collected and recycled by OC stand admitted by the Corporate Debtor itself before the CPCB. In view of Corporate Debtor's own admission, the question of "verification" of quantities collected does not even arise.
- m) That if the Corporate Debtor did not want to make a declaration without verifying the quantities of e-waste collected by the Operational Creditor, it must have submitted an amended Form 3 reducing/omitting the quantities collected by the Operational Creditor. However, the Corporate Debtor has deliberately not done the same since it benefitted the Corporate Debtor.
- n) That even CPCB has never raised any objection to the Form-3 submitted by the Corporate Debtor containing the aforesaid disclaimer. Clearly, CPCB has accepted the Form 3 submitted by the Corporate Debtor. Further, in any event, even if CPCB raises any concerns regarding the quantities collected by the



Operational Creditor or lack of documents regarding the same, the Corporate Debtor is completely protected by virtue of the indemnity clause contained in Cl. 14 (b) (v) of the Agreement.

- o) That the Operational Creditor has already submitted/placed on record several documents including duplicate invoices, e-way bills etc. that formed part of the documents specified in Clause 8 of the Agreement. In addition, the Operational Creditor has also placed on record several Whats app chats wherein all updates regarding quantities collected by the Operational creditor were shared with the Corporate Debtor.
- p) Therefore, the Operational Creditor is entitled to the amount due and payable by the Corporate Debtor and hence, the instant application is filed before this Adjudicating Authority for initiating a Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.

#### **5. Submission by the Learned Counsel appearing on behalf of the Corporate Debtor**

- a) It is submitted on behalf of the Corporate Debtor that the Operational Creditor has failed to disclose that the Corporate Debtor has already disputed the alleged debt as stated by the Operational Creditor on account of non-performance of the terms of the Agreement for Management of Extended Producer Responsibility dated 05.08.2019. Clause 8 of the Agreement categorically states that the Operational Creditor would only become entitled for payment on the invoice raised for the material collected and recycled, upon submitting various specific documents, as specified in the said clause, thereby confirming the work done.



- b) That the contention of the Corporate Debtor is based upon three factors. Firstly, the alleged debt is disputed. Secondly, the Operational Creditor has deliberately concealed that it violated terms of the Agreement. Thirdly, the Operational Creditor has malafidely relied on the incident of fire to evade its obligations.
- c) That the alleged debt over which the Operational Creditor was seeking payment from the Corporate Debtor was sent after a considerable time had lapsed, from the date of the alleged work done, and even then, the Operational Creditor had failed to submit the documents. It is submitted that the Operational Creditor has not submitted such documents, as contemplated by the Agreement till date.
- d) Furthermore, even after the purported fire incident, by an e-mail dated 02 March 2022, the Corporate Debtor categorically informed the Operational Creditor that "Any invoice which is not substantiated with required documents can't be checked or paid". Therefore, there exists a "pre-existing dispute" between the parties herein.
- e) The Corporate Debtor had issued purchase orders for the financial year 2019-20, 2020- 21 and 2021-22, and admittedly the Corporate Debtor has cleared the invoice for 2019-20 since the Operational Creditor had submitted the documents mentioned under Clause 8 of the Agreement. However, in respect of the purchase orders issued for some part of the financial year 2020-21 and for the financial year 2021-22, the Operational Creditor has not submitted any documents.



- f) It is submitted that the Operational Creditor has 3 plants and the fire broke out at one of the plants on 24.06.2021 and the remaining two plants and the registered office were not affected by the fire incident.
- g) It is further submitted that the documents sought by the Corporate Debtor for making payments, as stipulated under the Agreement, are contemporaneous documents/records which are also maintained by the transporter/logistic agencies for movement. Hence, the Operational Creditor could have obtained these documents from the vendors but the said operational Creditor failed to take any steps which shows their mala fide conduct.
- h) It is additionally submitted that the Operational Creditor has collected and recycled 7,288.910 Mt. for the Corporate Debtor. It is mentioned that the invoices and documents for 3965.2 Mt. have not been submitted by the Operational Creditor due to the fire incident and final confirmation on these documents are yet to be received from the Operational Creditor. Therefore, the Corporate Debtor was unable to verify the work undertaken by the Operational Creditor in FY 20-21 due to non-submission of the necessary documents by the Operational Creditor and hence filed its Form-3 with CPCB.

### ***Analysis & Findings***

6. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition, reply filed by the Corporate Debtor, rejoinder filed by the Operational Creditor and written submissions presented by both the Operational Creditor and the Corporate Debtor. Since the registered



office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.

7. It is to be noted that the 'Operational Creditor' had sent a demand notice dated 26.04.2022 to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. 12,78,34,882.41/- (Rupees Twelve Crores Seventy-Eight Lakhs Thirty-Four Thousand Eight Hundred Eighty-Two and Forty-One Paise) along with interest @ 18 % p.a. till 25.05.2022. Therefore, the present petition meets the pecuniary threshold limit of Rs. 1 Crore, as required by Section 4 of the Code.
8. The Applicant has tabulated the invoices included in its claim in Part IV of its Application as extracted hereunder:

<b>S.No</b>	<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Amount (Rs.)</b>
1.	DWM2021/124I164	23.09.2020	88,63,260.25
2.	DWM2021/124I165	23.09.2020	86,82,631.75
3.	DWM2122/124I224	22.06.2021	87,61,500.00
4.	DWM2122/124I225	22.06.2021	81,51,292.50
5.	DWM2021/124I446	21.01.2021	75,30,907.51
6.	DWM2021/124I590	10.03.2021	80,00,178.76
7.	DWM2021/124I591	10.03.2021	57,38,671.88
8.	DWM2122/124I099	13.05.2021	65,55,526.88
9.	DWM2122/124I100	13.05.2021	85,53,856.88
10.	DWM2122/124I0650	19.01.2022	66,70,024.00



11.	DWM2122/124I0651	19.01.2022	1,08,77,978.00
12.	DWM2122/124I0663	25.01.2022	1,09,70,903.00
13.	DWM2122/124I0664	25.01.2022	95,02,024.00
14.	DWM2122/124I0665	25.01.2022	74,17,185.00
15.	DWM2122/124I0666	25.01.2022	57,19,976.00
16.	DWM2122/124I0667	25.01.2022	93,58,322.00
17.	DWM2122/124I0668	25.01.2022	90,93,375.00
18.	DWM2122/124I0669	25.01.2022	92,14,399.00
19.	DWM2122/124I0670	25.01.2022	89,05,755.00
20.	DWM2122/124I0688	02.02.2022	57,57,279.00
21.	DWM2122/124I0691	02.02.2022	1,05,42,474.00
22.	DWM2122/124I0692	02.02.2022	93,97,992.00
23.	DWM2122/124I0693	02.02.2022	52,22,739.00

9. However, on the perusal of the invoices containing outstanding amount for the Financial Year 2020-21 and 2021-22 as claimed by the Operational Creditor, it has come to our knowledge that the total no. of invoices for the abovesaid period is 23. Amongst the said 23 invoices, the default in context of 5 invoices has occurred during the excluded period as mentioned under Section 10A of the Code, i.e., from 25.03.2020 to 24.03.2021. Section 10A of the Code reads as:

*“10A. Notwithstanding anything contained in Sections 7,9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25<sup>th</sup> March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*



*Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25<sup>th</sup> March, 2020.”*

Therefore, the present case entails the situation whereby the debt amount contains the default, the part of which has occurred during the excluded period, i.e., the period mentioned under Section 10A of the Code.

**10.**It has been argued on behalf of the Operational Creditor that even if the said 5 invoices are excluded, the claim would remain much above the pecuniary threshold under Section 4 of the Code. In our view, however, it is pertinent to analyze whether the Operational Creditor can confine the invoices to a specific period, excluding some invoices which fall under the period excluded to initiate CIRP against the Corporate Debtor, when the Demand Notice under Section 8 includes all the invoices claiming default and the debt amount is significantly based on these invoices?

**11.**In order to determine whether the segregation of invoices can be done so as to fulfil the conditions related to ‘debt’ and ‘default’ as stipulated under the provisions of the I& B Code, categorical guidance is available in the decision of the Hon’ble National Company Law Appellate Tribunal, New Delhi (NCLAT) in the case of **M/s. Next Education India Private Limited V. M/s. K12 Techno Services Private Limited, Company Appeal (AT) (Insolvency) No. 98 of 2019**, wherein, the Hon’ble NCLAT has held that the Tribunal cannot confine to one or other invoice if the Applicant has relied on all the invoices to arrive at the default amount. The said observation reads as:



*“21. As can be seen from Section 8, reproduced above, the moment there is an occurrence of a default, copy of an invoice demanding payment of the amount involved in the default is to be delivered by way of a Demand Notice to the ‘Operational Creditor’. Form III gives the details of the invoices. In the instant case, the ‘Operational Creditor’ has given the details of invoices from (pages 399 to 406 of Volume II) and has also crystallized the amount at Rs. 2,39,85,521.35/-, which is unpaid from 2011. Therefore, the argument of the Learned Counsel for the ‘Operational Creditor’ that the period should be confined only from 2015 to 2017 cannot be sustained. The Tribunal cannot confine to one or other invoice if the Applicant has relied on all the invoices to arrive at the amount of Rs. 2,39,85,521.35/- in the Demand Notice under Section 8. We are of the view that the Tribunal does not have Jurisdiction in these Insolvency Proceedings to cut-short the invoices which would cause recurring dates of cause of action as it is not a suit for recovery.”*

**12.** In the light of the abovementioned principle laid down by the Hon’ble NCLAT, we are of the opinion that it is the petitioner who has to see whether any invoices are attracting Section 10A period or not at the time of issuance of Section 8(1) notice and consider to issue notice excluding the invoices relating to 10-A period. Including invoices covered under Section 10-A period automatically invalidates notice as the purpose of notice is to afford an opportunity to the Corporate Debtor to consider the payment of unpaid operational debt. It is not for the Adjudicating Authority to segregate the invoices and determine whether the debt amount claimed and the default henceforth, fulfils the minimum threshold limit of Rs. 1 Crore as laid down under Section 4 of the Code. The adjudication by the Adjudicating Authority shall be solely based on the debt amount as claimed by the petitioner before



this Adjudicating Authority. It is up to the petitioner to claim the correct and admissible default amount in light of the provisions of law in force.

**13.** We further observe that in the case of any default amount as claimed before us, if the part-default occurred during the period excluded to initiate CIRP against the Corporate Debtor, then the whole of the claim shall be liable to be discarded, irrespective of the fact that by taking out the invoices which falls under the excluded period, the claim otherwise fulfils the minimum threshold limit of Rs. 1 Crore. Hence, we are of the opinion that the above petition is liable to be dismissed in the light of the abovesaid reasons.

**14.** It is, accordingly, hereby ordered that the application bearing CP (IB) No. 583/ND/2022 filed by, M/s. Deshwal Waste Management Pvt. Ltd., (Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s LG Electronics India Pvt. Ltd. (Corporate Debtor), stands **dismissed without costs**. The petitioner can prosecute his claims before the courts/other legal forums, as per the law.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Sd/-**  
**(Dr. Binod Kumar Sinha)**  
**Member (Technical)**

**Sd/-**  
**(P.S.N. Prasad)**  
**Member (Judicial)**