

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI**

**CP (IB) No.3877/MB/2019**

*[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:

**MARINE GEOLOGY SERVICES LLP**

[Partnership No.OC 343108]

**Registered Office:** C/o Singhania & Co. 102-103  
10th Floor, Jolly Maker Chambers-II, Nariman Point  
Mumbai-400 021, Maharashtra.

**...Operational Creditor**

*VERSUS*

**GEO API SOLUTIONS PRIVATE LIMITED**

[CIN: U74120MH2013PTC246620 ]

**Registered Office:** Shop No.539, 4th Floor  
Orchard Road Mall, Survey No. 169  
Aarey Milk Colony, Goregaon (East)  
Mumbai- 400065, Maharashtra.

**...Corporate Debtor**

**Pronounced: 05.02.2024**

**CORAM:**

**HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)**

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances : Hybrid mode**

Operational Creditor: Adv. Ashish Dalal & Adv. Avni Singhania  
i/b Singhania & Co.

Corporate Debtor: Adv. Sankalp Anantwar a/w Adv. Apporva Kulkarni  
i/b SMA Law Partners

**ORDER*****[Per: SANJIV DUTT, MEMBER (TECHNICAL)]*****1. Background**

- 1.1 This Application bearing C.P.(IB) No.3877/MB/2019 was filed by Marine Geology Services LLP, the Operational Creditor on 04.11.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of GEO API Solutions Private Limited, the Corporate Debtor.
- 1.2 The Operational Creditor is a Limited Liability Partnership (LLP) registered under the laws of England and having its place of business in Birmingham (the UK) and Russia. It is engaged in the business of geological survey of natural resources. The Corporate Debtor is in the field of seismic industry and undertakes various projects involving acquisition, processing and interpretation of seismic data.
- 1.3 The Corporate Debtor was awarded a contract in Myanmar and, accordingly, the Corporate Debtor sought for services of the Operational Creditor and entered into an Agreement on 03.02.2017. As per the Agreement, the Operational Creditor completed the work and both the parties executed Certificate of Completion on 11.05.2019.
- 1.4 Subsequently, a Settlement Agreement was entered into between the parties on 02.11.2018 under which the Corporate Debtor had to make a payment of

1.25 million USD within a period of one month from the date of execution of the Settlement Agreement.

- 1.5 Thereafter, statutory notice under Section 8 of the Code was issued on 11.09.2019 which was served on the Corporate Debtor on 17.09.2019. However, the Corporate Debtor made only part payment of 150,000 USD on 20.09.2019 and failed to pay the balance amount of 1.10 million USD. This led to the filing of the present Application by the Operational Creditor seeking initiation of CIRP in respect of the Corporate Debtor.

**2. Averments of the Operational Creditor**

- 2.1 The Operational Creditor submits that the Corporate Debtor was awarded a contract for execution of certain works including 3D seismic data acquisition and field processing in Myanmar sometime in the year 2017 and to fulfil the contract, the Corporate Debtor entered into an Agreement with the Operational Creditor on 03.02.2017. It is stated that the Operational Creditor completed the work in terms of the said Agreement and both the parties executed a Certificate of Completion on 11.05.2018.
- 2.2 The Operational Creditor submits that the total value of the contract as per the Agreement dated 03.02.2017 was 2.5 million USD.
- 2.3 The Operational Creditor further submits that upon failure of the Corporate Debtor to release the said payment, negotiations were entered into and finally both the parties agreed to settle the outstanding dues payable to the Operational Creditor at a sum of 1.25 million USD *vide* Settlement Agreement dated 02.11.2018. The Corporate Debtor was required to make payment of 1.25 million USD within one month from the date of execution of the

Settlement Agreement. However, the Corporate Debtor failed to make the said payment.

- 2.4 Thereafter, the Operational Creditor made continued and persistent follow-up with the Corporate Debtor for release of payment. The Corporate Debtor *vide* email dated 16.05.2019 sought further time to make the payment and attached a new schedule for payment and handed over 4 cheques towards guarantee to comply with the revised payment schedule. It was agreed that these cheques should be returned to the Corporate Debtor as and when the payments are made by the Corporate Debtor.
- 2.5 It is submitted by the Operational Creditor that the contents of the said email are of utmost importance in deciding this matter because in the said mail, there is no mention of any pre-existing dispute between the Corporate Debtor and the Operational Creditor.
- 2.6 The Operational Creditor submits that even after agreeing to the revised payment schedule, since no payment was forthcoming from the Corporate Debtor, a legal notice was issued on 27.08.2019 calling upon the Corporate Debtor to make the payment but the said notice failed to evoke any response.
- 2.7 Thereafter, statutory notice under Section 8 of the Code was issued on 11.09.2019 which was received by the Corporate Debtor on 17.09.2019. But no reply thereto was received from the Corporate Debtor. After receipt of the notice, the Corporate Debtor remitted an amount 150,000 USD to the Operational Creditor on 20.09.2019.
- 2.8 It is thus submitted that as on the date of present Application, a sum of 1.10 million USD, i.e., Rs.7,88,26,000/- (Seven Crores Eighty-Eight Lakhs Twenty- Six Thousand Rupees) based on the then prevailing conversion rate

was owed by the Corporate Debtor to the Operational Creditor as per the Settlement Agreement dated 02.11.2018 along with interest at the rate of 18% p.a. from the date of statutory notice issued by the Operational Creditor. The same has been claimed to be in default in Part-IV of the Application and the date of default has been mentioned as 02.12.2018.

- 2.9 The Operational Creditor further submits that it has furnished the Affidavit under Section 9(3)(b) of the Code along with the Application affirming that the Operational Creditor has not received any notice of dispute regarding pending amount from the Corporate Debtor after receipt of Demand Notice dated 11.09.2019 and that till date, no suit, arbitration proceedings or litigation of whatsoever nature arising out of the said transaction is pending between the parties.

### **3. Contentions of Corporate Debtor**

- 3.1 The Corporate Debtor in its Affidavit-in-Reply has opposed the present Application preferred by the Operational Creditor on various grounds. The Corporate Debtor submits that the Application filed by the Operational Creditor is not maintainable as the alleged debt claimed by the Operational Creditor does not fall within the definition of an 'operational debt' under section 5(21) of the Code in so far as the debt of the Operational Creditor arises out of the Settlement Agreement. The Corporate Debtor relies on order of NCLT, Delhi Bench in *M/s Brand Reality Services Ltd. v. M/s Sir John Bakeries India Pvt. Ltd.* [CP(IB) No.1677/(ND)/2019] and NCLT, Allahabad Bench in *Delhi Control Devices (P) Ltd. v. Fedders Electric and Engineering Ltd.* [CP (IB) No.343/ALD/2018] wherein it was held that the debt arising out of the settlement agreement could not be categorised as an operational debt.

Further, reference has been made to judgment of the Hon'ble NCLAT, New Delhi in **Amrit Kumar Agrawal v. Tempo Appliances Pvt. Ltd.** [Company Appeal (AT) (Insolvency) No.1005 of 2020] wherein it has been held that the Appellant has other remedies available under law for effecting recovery of money due in terms of the Settlement Agreement but the triggering of CIRP is not warranted.

3.2 The present Application has been signed and verified by one Mr. Shaurya Goel on the basis of the Power of Attorney dated 31.07.2019 executed at St. Petersburg, Russia. The Corporate Debtor states that from the bare perusal of the Power of Attorney issued to Mr. Shaurya Goel, it is clear that there is no specific authority granted to the signatory to file proceedings under the Code to initiate CIRP against the Corporate Debtor. Reference is made in this regard to the judgment of the Hon'ble NCLAT, New Delhi in **Palogix Infrastructure Pvt. Ltd. v. ICICI Bank Ltd.** [Company Appeal (AT) (Insolvency) No. 30 of 2017], in which it was held that only an "authorised person" as distinct from a "Power of Attorney Holder" can make an Application under Section 7 of the Code.

3.3 The Corporate Debtor submits that as per the Agreement dated 03.02.2017 between the Operational Creditor and the Corporate Debtor, the scope of work and obligations of the Operational Creditor comprised of 3D seismic data acquisition and field processing in Myanmar Block EP4 with total volume of 222 sq. km; mobilisation of equipment and manpower including acquisition of equipment, if any, and maintenance and checking of equipment. The Corporate Debtor submits that the obligations under the said Agreement were never fulfilled by the Operational Creditor as the 3D Seismic Data acquisition

was never completed and Operational Creditor even failed to pay for equipment and, therefore, the Corporate Debtor had to pay for most of the equipment and its mobilisation as required for the project. The Corporate Debtor had to incur additional cost for mobilising the equipment and the Operational Creditor failed to even arrange manpower for maintenance and checking of equipment. The Corporate Debtor had to arrange for necessary manpower for all the maintenance and testing.

3.4 The Corporate Debtor submits that due to these serious breaches and failure on the part of the Operational Creditor, the Corporate Debtor had to negotiate with the main client, Bashneft International B.V. and the main contractor, Asian Oilfield Services Ltd, to convert 3D survey to 2D acquisition with lower commercial rates as the rates for conducting 3D survey are much more than the rates for conducting 2D survey and also require specific technical know-how and the equipment. The Corporate Debtor further submits that the conversion of 3D survey into 2D survey also caused heavy loss to the Corporate Debtor.

3.5 It is contended by the Corporate Debtor that the parties entered into a Settlement Agreement dated 02.11.2018 for an amount of 1.25 Million USD which was subject to payment from the main client, Bashneft International B.V. to Asian Oilfield Services Ltd. and in turn from Asian Oilfield Services Ltd. to the Corporate Debtor. The Corporate Debtor claims that it is yet to receive the outstanding dues from Asian Oilfield Services Ltd. It is submitted that some amount was received by the Corporate Debtor from Asian Oilfield Services Ltd, and, therefore, the Corporate Debtor had promptly made a payment of 150,000 USD to the Operational Creditor on 11.09.2019. It is

contended that the Settlement Agreement is a contingent contract and the Corporate Debtor is liable to pay to the Operational Creditor only when it receives amounts from Asian Oilfield Services Ltd. The Corporate Debtor submits that rather than making the complete payment in respect of the Myanmar project to the Corporate Debtor, Asian Oilfield Services Ltd. has withheld the amount on the pretext that there is an alleged dispute between Asian Oilfield Services Ltd. and Corporate Debtor in respect of some other project to which the Operational Creditor is not a party. Moreover, Asian Oilfield Services Ltd. has filed a Commercial Suit (L) No.337 of 2020 against the Corporate Debtor before the Hon'ble High Court at Bombay claiming recovery of amount and damages from the Corporate Debtor.

- 3.6 The Corporate Debtor has referred to Annexure 2 of the Agreement dated 03.02.2017 which obligates the Operational Creditor to arrange for the equipment as specified therein. However, it is contended that the Operational Creditor failed to even fulfil the obligation and as the Operational Creditor expressed its inability to procure the equipment, the Corporate Debtor had to support the Operational Creditor for purchase of the equipment. In this connection, the Corporate Debtor has placed on record copies of Tripartite Agreement dated 06.02.2017 executed among HGS India Limited, the Operational Creditor and the Corporate Debtor for purchase of High Sensitivity Geophone Strings and another Tripartite Agreement dated 16.02.2017 executed among Inova Systems Corporation, Canada, Operational Creditor and the Corporate Debtor for purchase of certain other equipment. As per the terms of the said Tripartite Agreements, the Operational Creditor and the Corporate Debtor were jointly liable to make

payments to HGS India Ltd. and Inova Systems Corporation. However, the Operational Creditor failed to make the payments in respect of the equipment and the Corporate Debtor was constrained to make payments to the suppliers on behalf of the Operational Creditor.

3.7 It is claimed that the Corporate Debtor has in all, made payments of 2,071,123.44 USD on behalf of the Operational Creditor. It is pointed out that since there was a delay on the part of Corporate Debtor to make the payment to HGS India Ltd., the latter had initiated IBC proceedings against the Corporate Debtor and IRP was appointed by *ex parte* order. However, the matter was later settled with HGS India Ltd. and the case was withdrawn.

3.8 It is submitted that the Operational Creditor not only failed to make payment against the purchase of equipment but also failed to pay for its maintenance, storage and demurrage charges at the site in Myanmar. The maintenance cost of the equipment was also paid by the Corporate Debtor from the time the project was completed in May, 2018. The representative of the Operational Creditor, Mr. Enver Ablya was apprised and informed that the Corporate Debtor was incurring on behalf of the Operational Creditor maintenance charges, storage and demurrage charges and customs charges for the equipment of the Operational Creditor at the site in Myanmar. However, the Operational Creditor chose to ignore the request for making the payment towards the maintenance, storage, demurrage charges of the equipment and with mala fide intention preferred this Application to extort unreasonable amount.

3.9 It is contended that there are disputes which arise from the said Agreement executed between the Operational Creditor and the Corporate Debtor. As

against the averment of the Operational Creditor that the Corporate Debtor has not issued any notice of dispute under Section 8(2) of the Code, the Corporate Debtor submits that non-issuance of notice of dispute cannot preclude the Corporate Debtor from raising the genuine disputes between the parties. According to the Corporate Debtor, as held by the Hon'ble NCLAT, New Delhi in ***Greymatter Entertainment Pvt. Ltd. v. Pro Sportify Pvt. Ltd.*** [Company Appeal (AT) (Insolvency) No. 1043 of 2021], mere failure to reply to the demand notice does not extinguish the rights of the Corporate Debtor to show the existence of pre-existing disputes.

- 3.10 The Corporate Debtor further submits that Bashneft International B.V. has addressed a letter dated 09.04.2021 to Asian Oilfield Services Ltd. and marked copies to the Operational Creditor and the Corporate Debtor in respect of payment of custom charges and clearing the equipment including the equipment owned by the Operational Creditor which are lying in Myanmar. The parties will have to pay the appropriate customs duty and penalties to export it back to India or any other country. The Corporate Debtor submits that Bashneft International B.V. being the main client may impose charges/ penalties and damages upon Asian Oilfield Services Ltd, which in turn may deduct those charges from the amount payable to the Corporate Debtor. It is argued that the Operational Creditor has not taken any steps to clear the equipment from Myanmar and saddled the entire burden on the Corporate Debtor.
- 3.11 The Corporate Debtor thus submits that there are pre-existing disputes between the parties which are to be adjudicated by the appropriate authority. Further, the debt is not crystallized as there are events which occurred

subsequent to the execution of the Settlement Agreement and filing of the present Application and Corporate Debtor had to incur costs on behalf of the Operational Creditor.

- 3.12 The Corporate Debtor further submits that as per clause 11 of the original Agreement, any dispute arising should be referred to and finally resolved by arbitration under the LCIA (London Court of International Arbitration) Rules.
- 3.13 The Corporate Debtor submits that it is registered as a Micro, Small and Medium Enterprise (MSME) with the Ministry of MSME and has received an Udyog Aadhar Registration Certificate. Lastly, the Corporate Debtor submits that it is a going concern and is executing various projects and have receivables of approximately Rs.9 crores and, therefore, it cannot be assumed that there is inability on the part of Corporate Debtor to pay its debts.

4. **Rejoinder by the Operational Creditor**

- 4.1 The Operational Creditor in its rejoinder filed on 15.07.2021 reiterates that the claim made by the Operational Creditor arises out of the Agreement dated 03.02.2017 to render services to the Corporate Debtor and thus falls within the definition of 'operational debt' under section 5(21) of the Code. The Corporate Debtor has admitted its liability arising out of the said Agreement by entering into a Settlement Agreement dated 02.11.2018 as well as by sharing a revised payment schedule *vide* an email dated 16.05.2019 and by paying 150,000 USD on 20.09.2019. The Settlement Agreement is nothing but an acknowledgement of debt after negotiation which reduced the total outstanding from 2.5 Million USD to 1.25 million USD.
- 4.2 The Operational Creditor points out that the Power of Attorney executed by it gives complete authority to Mr. Nitin Goel and Mr. Shaurya Goel to file all legal

proceedings against the Corporate Debtor including insolvency proceedings, as stated in paragraph 2 of the said Power of Attorney.

- 4.3 The Operational Creditor submits that it has fulfilled all the obligations under the Agreement as evidenced from the Completion Certificate dated 11.05.2018 and that the issues of non-payment for equipment and failure to arrange manpower have been raised as an afterthought and were never raised at the time of grant of the Completion Certificate or signing of the Settlement Agreement or subsequent to the issuance of legal notice and Section 8 notice.
- 4.4 The Operational Creditor clarifies that the survey had to be converted from 3D to 2D due to protests by the local population and not due to any failure on part of the Operational Creditor. It was the duty of the Corporate Debtor to carry out local liasoning required by the Operational Creditor.
- 4.5 The Operational Creditor contends that the settlement was not subject to payment by Asian Oilfield Services Ltd. and Bashneft International B.V. and that the amount agreed upon in the Settlement Agreement was to be paid within one month of execution of the said agreement. The Operational Creditor was informed only about the inability to pay outstanding dues and was never a party to the contract between Asian Oilfield Services Ltd./ Bashneft International B.V. and the Corporate Debtor and was unaware about dues payable by Asian Oilfield Services Ltd. or Bashneft International B.V.
- 4.6 Further, there is no privity of contract between the Operational Creditor and Asian Oilfield Services Ltd. and Operational Creditor has no knowledge regarding terms of payment by Asian Oilfield Services Ltd. to the Corporate Debtor. To contend that the Corporate Debtor is yet to receive payment from Asian Oilfield Services is an incorrect and misleading statement made by the

Corporate Debtor since it was Asian Oilfield Services Ltd. which had filed a commercial suit against the Corporate Debtor in the Hon'ble High Court of Bombay that was settled by the Corporate Debtor.

- 4.7 The Operational Creditor submits that as the Corporate Debtor faced financial difficulties, the Operational Creditor agreed to purchase equipment jointly with the Corporate Debtor and so the Tripartite Agreement was executed.
- 4.8 The Corporate Debtor has not paid any amount on behalf of the Operational Creditor. As regards the claim of the Corporate Debtor that it had paid maintenance, storage charges etc, on behalf of Operational Creditor, the Operational Creditor submits that all these issues were taken into account while the Settlement Agreement was executed.
- 4.9 The Operational Creditor reiterates that there was no dispute regarding the Agreement and if the Corporate Debtor had any disputes before agreeing to make the payment and entering into the Settlement Agreement and/or after getting the legal notice or Section 8 notice, the Corporate Debtor should have invoked the arbitration. It is asserted that the Completion Certificate was issued by the Corporate Debtor without any demur.
- 4.10 The Operational Creditor contends that the so-called disputes raised at this point of time are nothing but an afterthought and these were never raised after issuing the Completion Certificate and even subsequently at any point of time as is evidenced by the correspondences between the parties. This is nothing but an attempt to frustrate the proceedings. The Corporate Debtor has neither issued any notice nor approached any court nor invoked the arbitration clause of the original Agreement with regard to the services rendered. Instead, the Corporate Debtor entered into a Settlement Agreement acknowledging the

debt. If there were any disputes, the Corporate Debtor would not have made part payment of 150,000 USD after receiving Section 8 notice without any riders. The Operational Creditor thus submits that there is no dispute as to the quantum of operational debt due and payable to the Operational Creditor, i.e., 1.10 million USD. The Operational Creditor has also relied on certain judicial decisions in support of its case.

## 5. **Analysis and Findings**

5.1 We have duly considered the pleadings as well as written submissions of both the parties along with the materials available on record and heard the Counsel for the Operational Creditor and the Corporate Debtor. It is well-settled that while dealing with an application under Section 9 of the Code, the Adjudicating Authority will have to determine-

- (i) Whether there is an 'operational debt' as defined under Section 5(21) exceeding the threshold limit under Section 4 of the Code;
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid; and
- (iii) Whether there is existence of a dispute between the parties or the record of pendency of a suit or arbitration proceeding filed before the receipt of the Demand Notice of the unpaid operational debt in relation to such dispute

If any of the aforesaid conditions is lacking, the application would have to be rejected [*Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353*]. It is also a settled proposition of law that an application under Section 9 of the Code has to be mandatorily admitted if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) are satisfied.

5.2 At the outset, it is proposed to examine whether the debt of 1.10 Million USDs arising under the Settlement Agreement dated 02.11.2018 is an 'operational debt' within the meaning of Section 5(21) of the Code. It is observed from the record that the Operational Creditor and the Corporate Debtor entered into an Agreement dated 03.02.2017 under which the Operational Creditor was required to provide certain equipment and personnel for execution and management of works including 3D seismic data acquisition and field processing in Myanmar. The project was undertaken by Bashneft International B V. which is described as the 'Main Client' in the relevant documents. Asian Oilfield Services Limited was the main contractor and the Corporate Debtor was the sub-contractor for the scope of work. The total amount payable to the Operational Creditor for satisfactory completion of work in terms of the aforesaid Agreement was 2.5 Million USD. It is also noticed from the record that on completion of the said work, both the parties executed a Completion Certificate dated 11.05.2018 which clearly recorded, *inter alia*, that "*all deliverables according to contract were transferred to main Client Bashneft Int. MGS (Operational Creditor) and the Customer (Corporate Debtor) recognize the calculation provided hereof as true, agree with it and do not have any claims and complaints to each other.*" This brings out the Corporate Debtor's admission that the assigned work was completed by the Operational Creditor satisfactorily without any claims or complaints. However, it is observed that instead of 3D field seismic data acquisition works, only a 2D field seismic program was actually undertaken by the parties.

5.3 Thereafter, it is noticed from the record that both the Operational Creditor and the Corporate Debtor carried out an exercise of “mutual settlement of accounts” and prepared a memorandum titled “Act of Final Settlement” dated 02.11.2018 with regard to full and final settlement of their accounts pertaining to the Myanmar Project. It was clearly stated that instead of the originally agreed amount of 2.5 Million USD, only a sum of 1.25 Million USD would be paid “*within next one month*” by the Corporate Debtor to the Operational Creditor “*from next first payments received from Bashneft (Main customer) to Asian Oilfield (main contractor) and Asian Oilfield to GeoAPI Ltd (the Corporate Debtor) in respect of the subject project. This is full and final settlement for the subject contract*”. It was unequivocally agreed between the parties that the Operational Creditor could not have any more claim than final settlement amount of 1.25 Million USD. Thus, it is found that the aforesaid memorandum of Final Settlement dated 02.11.2018 arises out of the initial Agreement dated 03.02.2017 executed between the parties for engaging the Operational Creditor for providing certain services to the Corporate Debtor in regard to the Myanmar Project. The amount of 1.25 Million USDs agreed to be paid under the said memorandum of Final Settlement has direct nexus with the services rendered by the Operational Creditor to the Corporate Debtor in respect of the Myanmar Project and thus partakes the character of an ‘operational debt’ within the meaning of Section 5(21) of the Code. Merely because the amount of debt has been ascertained *vide* the said memorandum of Final Settlement, the nature of the debt will not change and it will retain the character of ‘operational debt’. Therefore, the claim of the Corporate Debtor that the impugned debt of 1.25 Million USD owed to the

Operational Creditor under the memorandum of Final Settlement is not an 'operational debt' under section 5(21) of the Code is found to be devoid of merit and is accordingly rejected.

- 5.4 The reliance placed by the Corporate Debtor on the orders of co-ordinate Benches in *M/s Brand Reality Services Ltd.* and *Delhi Control Devices (P) Ltd.* and judgment of Hon'ble NCLAT in ***Amrit Kumar Agrawal*** (*supra*) will be of no help, because the facts of the present case are different and distinguishable. As a matter of fact, the view taken by the co-ordinate Bench in *M/s Brand Reality Services Ltd.* on this issue was held to be erroneous by the Hon'ble NCLAT *vide* its judgment dated 10.03.2022 in the same matter in Company Appeal (AT)(Insolvency) No.958 of 2020. We find that the memorandum of Final Settlement was executed after negotiations and mutual settlement of accounts between the parties which resulted in reduction of the total outstanding amount payable to the Operational Creditor from 2.5 Million USD to 1.25 Million USD. This indicates that such reduction was agreed to be effected after taking into account the claims of the Corporate Debtor including those in regard to the conversion of 3D survey into 2D survey and alleged payments made by the Corporate Debtor on behalf of the Operational Creditor towards purchase of equipment, maintenance of equipment, storage charges etc. Accordingly, both the parties in exercise of their business prudence and commercial wisdom agreed to settle the outstanding dues of the Operational Creditor for 1.25 Million USD as against the initially agreed amount of 2.5 Million USD. In this sense, the amount of 1.25 Million USD agreed upon in the Settlement Agreement represents a crystallized and undisputed operational debt due and payable by the Corporate Debtor to the Operational Creditor.

- 5.5 On perusal of the aforesaid memorandum of Final Settlement, it is noticed that the Corporate Debtor was required to make payment of 1.25 Million USD to the Operational Creditor within a period of one month from the date of its execution. In other words, the payment was to be made latest by 01.12.2018. However, the Corporate Debtor failed to make the payment within time. After persistent follow-up by the Operational Creditor, the Corporate Debtor *vide* its email dated 16.05.2019, furnished a new schedule of payment agreeing to clear the entire dues of 1.25 Million USD in four tranches between 10.06.2019 and 30.08.2019. The Corporate Debtor also gave four cheques of equivalent amount as a 'guarantee' which were to be returned after each payment made to the Operational Creditor through wire transfer. The Corporate Debtor also clarified that "*above commitment is made as per commitment from our clients on date of payment*". However, the Corporate Debtor once again failed to keep its commitment.
- 5.6 This led the Operational Creditor to issue a legal notice dated 27.08.2019 followed by Demand Notice under Section 8 of the Code dated 11.09.2019 to the Corporate Debtor seeking payment of its outstanding dues. The Demand Notice was delivered to the Corporate Debtor on 17.09.2019. After receipt of said notice, the Corporate Debtor remitted a part payment of 150,000 USD to the Operational Creditor. Thus, it is found that the Corporate Debtor continues to be in default of payment of balance amount of 1.10 Million USD to the Operational Creditor till date. We find that the plea taken by the Corporate Debtor that it is liable to pay to the Operational Creditor only when it receives amounts from Asian Oilfield Services Ltd. and that it is yet to receive the outstanding dues from Asian Oilfield Services Ltd. is contrary to the materials

available on record and its action of making part payment to the Operational Creditor. On perusal of copy of order of Hon'ble High Court of Bombay dated 10.08.2022 placed on record by the Operational Creditor, it transpires that instead of Asian Oilfield Services Ltd, not releasing the dues of the Corporate Debtor as claimed, it was Asian Oilfield Services Ltd, which had actually filed a Commercial Suit (L) No.337 of 2020 against the Corporate Debtor for recovery of money and that the said Suit was withdrawn on the ground of settlement between the parties.

- 5.7 It is observed that the Corporate Debtor has raised the plea of pre-existing disputes with the Operational Creditor regarding losses suffered due to conversion of 3D survey into 2D survey, failure of Operational Creditor to procure equipment and incurring of charges on behalf of Operational Creditor for maintenance and storage of equipment. However, as brought out in Para 5.3 above, all these claims of the Corporate Debtor have already been taken into account while reducing the outstanding dues of the Operational Creditor from 2.5 Million USD to 1.25 Million USD. The Corporate Debtor cannot now be permitted to rake up the same issues in order to defeat the present proceedings initiated by the Operational Creditor under Section 9 of the Code.
- 5.8 More importantly, it is noted from the record that none of these issues was ever raised by the Corporate Debtor prior to the receipt of the Demand Notice under Section 8 of the Code on 17.09.2019. As brought out at Para 5.2 above, both the parties have categorically stated in the Completion Certificate dated 11.05.2018 that they have no "claims and complaints to each other" with regard to the work of Myanmar Project. Similarly, the memorandum of Final Settlement dated 02.11.2018 also does not refer to any of the alleged pre-existing disputes

with the Operational Creditor. There is neither any mention of such dispute existing between the parties in the email of the Corporate Debtor dated 16.05.2019 addressed to the Operational Creditor, nor any such pre-existing dispute was communicated to the Operational Creditor in response to the statutory notice under Section 8 of the Code. There is no doubt that mere failure to reply to the Demand Notice does not extinguish the rights of the Corporate Debtor to show the existence of a pre-existing dispute. However, it is well-settled that in the absence of delivery of letter or notice of dispute, the Corporate Debtor cannot raise the plea that there was existence of dispute. The onus to prove the existence of dispute lies on the Corporate Debtor which it has failed to discharge in the present case, because there is not even an iota of evidence on record to show that any notice of alleged pre-existing disputes was communicated by the Corporate Debtor to the Operational Creditor before the receipt of the Demand Notice dated 11.09.2019. Thus, the reliance placed by the Corporate Debtor on the judgment of Hon'ble NCLAT in **Amrop India Pvt. Ltd.** (*supra*) will not come to its rescue, in so far as the facts of that case were different and credible documentary evidence showing genuine pre-existing disputes was available on record in that case. In view of this position, it is clear that the plea of so-called pre-existing disputes raised by the Corporate Debtor is nothing but an afterthought and a moonshine defence which deserves to be rejected as such.

- 5.9 As regards the Corporate Debtor's contention that the Operational Creditor cannot approach the Adjudicating Authority under Section 9 of the Code, since arbitration clause is there in the agreement, it is now settled that presence of an arbitration clause in an agreement does not bar an operational creditor from filing an application under Section 9 of the Code. There is no embargo on the

Operational Creditor to file a Section 9 Application under the Code even if there is an arbitration clause under the agreement.

5.10 With regard to the plea of the Corporate Debtor that there is no specific authority given to Mr. Shaurya Goel as authorised signatory of the Operational Creditor to file the present Application under Section 9 of the Code, it is observed that the Power of Attorney executed by the Operational Creditor gives proper authority to Mr. Nitin Goel and Mr. Shaurya Goel to file all legal proceedings against the Corporate Debtor including insolvency proceedings, as mentioned in paragraph 2 of the said Power of Attorney. Therefore, the said plea raised on behalf of the Corporate Debtor is found to be untenable and accordingly rejected.

5.11 In view of above discussions, we are of the considered view that the Operational Creditor has been able to establish the existence of an 'operational debt' under the terms of mutual agreement exceeding the threshold limit of Rs.1 crore which was due and payable but has not been paid by the Corporate Debtor. The Application has been made in the prescribed form. It has been presented by the authorised person and is complete. Despite service of the Demand Notice dated 11.09.2019 on the Corporate Debtor on 17.09.2019, there is only part payment of the unpaid operational debt while the balance debt of 1.10 Million USD equivalent to Rs.7,88,26,000/- continues to be in default. The Corporate Debtor has failed to discharge the onus of proving and substantiating the factum of any pre-existing dispute between the parties in relation to the aforesaid operational debt prior to the date of receipt of the statutory Demand Notice under Section 8 of the Code. The Operational Creditor has proposed the name of Mr. Anish Gupta as Interim Resolution Professional and no disciplinary proceeding is

shown to be pending against him. Therefore, we find that all the pre-requisite conditions prescribed in Section 9(5)(i) of the Code for admission of the present Application are fully satisfied. We thus conclude that this is a fit case for initiating CIRP against the Corporate Debtor under Section 9 of the Code.

**ORDER**

In view of aforesaid findings, this Application bearing C.P.(IB) No.3877/MB/2023 filed by Marine Geology Services LLP, the Operational Creditor, under Section 9 of the Code for initiating CIRP in respect of GEO API Solutions Private Limited, the Corporate Debtor is **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as follows:

- a) There shall be a moratorium under Section 14 of the Code.
- b) The order of Moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicatory Authority approves the resolution plan under sub-section (1) of Section 31 of the Code or passes an order for liquidation of the Corporate Debtor under Section 33 of the Code, as the case may be.
- c) That public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
- d) That this Adjudicatory Authority hereby appoints **Mr. Anish Gupta, a registered Insolvency Professional having the Registration Number**

**IBBI/IPA-002/IP-N00285/2017-18/10843 and email address ipanishgupta@gmail.com** as the Interim Resolution Professional (IRP) having valid Authorisation for Assignment up to 03.08.2024 to carry out the functions under the Code in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (IBBI) (Insolvency Professional) Regulations, 2016.

- e) The fee payable to IRP/RP shall be in accordance with such Regulations, Circulars and Directions as may be issued by the IBBI. The IRP shall carry out his functions as contemplated under the provisions of the Code.
- f) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/IP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the Code on violation of which coercive steps will follow.
- g) The IRP/IP shall submit to this Adjudicatory Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Operational Creditor is directed to deposit a sum of Rs.5,00,000/-(Rupees Five Lakh Only) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors

(CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

- i) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the IRP by way of Speed Post and email and WhatsApp.
- j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- k) Besides, a copy of this order shall also be forwarded by the Registry of this Tribunal to the IBBI for their record.
- l) **Compliance report of the order by the Designated Registrar is to be submitted today.**

Sd/-

**SANJIV DUTT**  
**MEMBER(TECHNICAL)**  
Deepa/JNK

Sd/-

**K. R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**