

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

*(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)*

C.P. (IB) No.77/BB/2022

U/s 9 of I&B Code, 2016

R/w Rule 6 of I&B (AAA) Rules, 2016

M/s. MRO-TEK Realty Limited

Registered Office at:

No.6, New BEL Road,

Chikkamaranahalli,

Bengaluru – 560 054.

... Petitioner / Operational Creditor

Versus

M/s. Dexcel Electronics Designs Pvt. Ltd.

Registered Office at:

#138, 3rd Floor, Maruthi Tower,

Airport Road, Kodihalli,

Bengaluru – 560 008.

... Respondent / Corporate Debtor

Order delivered on: 25th May, 2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Petitioner : Ms. Parina Lalla, Adv.

For the Respondent : Shri Rajesh Chander Kumar Rohra, Sr. Adv.
with Shri Raunaq Chatterjee, Adv.

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The instant Petition has been filed on 28.04.2022 u/s 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter as 'IBC / Code') r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,

2016 by M/s. MRO-TEK Realty Limited (hereinafter referred to as 'Petitioner / Operational Creditor') with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Dexcel Electronics Designs Private Limited (hereinafter referred to as 'Respondent / Corporate Debtor') for defaulting an amount of Rs.3,19,73,902/- including interest with the date of default being 22.07.2021.

2. The Corporate Debtor – **M/s. Dexcel Electronics Designs Pvt. Ltd.**, is a Company incorporated under the provisions of Companies Act, 1956 with CIN: U32109KA2000PTC027452 having its registered address at #138, 3rd Floor, Maruthi Tower, Airport Road, Kodihalli, Bengaluru-560008. Hence, the jurisdiction lies with this Adjudicating Authority.
3. The Operational Creditor is a public limited Company engaged *inter alia* in the business of manufacturing networking equipment and providing networking solutions to its customers. The Corporate Debtor is a private limited Company engaged *inter alia* in the business of designing and developing customised hardware. The Operational Creditor is represented herein by its Chief Financial Officer, Mr. Srivathsa. Board Resolution passed in this regard by the Petitioner Company is at Annexure-A of the CP.
4. Brief facts of the case as stated by the Petitioner are as under:
 - (a) In October 2019, the Corporate Debtor (CD) approached the Operational Creditor (OC) with an urgent requirement to procure certain goods like Controller Cards, Front Panels, TX and RX. Subsequently, the CD issued a Purchase Order dated 10.12.2019 to the OC for the manufacture and supply of the said goods. The said goods were to be manufactured in accordance with the design specification provided by the CD. The OC manufactured and supplied 6 units of the Controller Cards to the CD in two batches and the CD accepted delivery of the same, and also released payment towards the same.

- (b) Subsequently, the CD started raising untenable issues in respect of the Controller Cards supplied to it and instructed the OC not to proceed with manufacturing the remaining units of Controller Cards ordered. Since at the insistence of the CD, the raw materials for remaining Controller Cards had already been purchased by the OC by this time, the OC called upon the CD to take delivery of the raw materials and release the payment for the same.
- (c) The CD *vide* its letter of undertaking dated 31.03.2021 agreed to take delivery of the raw materials on 07.06.2021, against a post-dated cheque issued by the CD to the OC for a sum of Rs.3,39,99,873/-, and further agreed to make payment for the said raw materials within 45 days from the date of delivery thereof.
- (d) Considering the CD's assurance, the OC raised Sales Invoice dated 31.03.2021 for the raw materials and, admittedly, delivered the raw materials to the CD on 07.06.2021. Further, as agreed by the Parties, the OC deposited the CD's cheque bearing No.007531 with its Bank. However, it was returned by Bank on 26.07.2021 with the endorsement 'Funds Insufficient'. Therefore, it called upon the CD to pay its debt, but the CD failed to pay the same. Hence, the OC lodged a Police Complaint against the CD with the Station House Officer, Sadashivanagara Police Station on 12.08.2021.
- (e) The CD issued a further LoU dt.27.08.2021 to the OC, wherein, the CD expressly admitted and unconditionally undertook to pay the OC Rs.3,39,99,873/- on or before 11.11.2021 along with penalty at the rate of 18% p.a. Pursuant thereto, the CD also made monthly payments towards the delay penalty to the OC for the period July to November, 2021. In furtherance to the said letter, the CD also issued another Cheque bearing No.007994 dated 11.11.2021 drawn on HDFC Bank for Rs.3,39,99,873/- to the OC. Upon its presentation, the same was

returned by the Bank on 12.11.2021 with the endorsement 'Exceeds Arrangement'. In the interregnum, the CD, instead of fully discharging its obligation, merely remitted an ad hoc sum of Rs.30 Lakhs to the OC on 11.11.2021.

- (f) In view of the CD's failure to honour its payment, the OC *vide* email dated 17.11.2021, called upon the CD to remit the balance outstanding payment and to also furnish the TDS Certificates. In response, the CD *vide* email dt.19.11.2021, admitted its liability and sought additional time to make all payments over tranches starting 31.12.2021 and ending 15.01.2022 with conditions. Since the conditions were not agreeable to the OC, the OC refused to accept the conditions of the CD and instead, afforded time to the CD until 31.12.2021 to clear the dues. Pursuant thereto, the OC was assured that all outstanding dues would be cleared by 31.12.2021, failing which the OC could re-present the aforesaid Cheque bearing No.007994 to recover the said amounts.
- (g) Even though time was granted till 31.12.2021, the CD again failed to pay the same. Upon presentation to the Bank, the said cheque was dishonoured with the endorsement 'Payment Stopped by Drawer'.
- (h) In view of repeated dishonour of said Cheques, the OC issued legal notice dt.07.01.2022 calling upon the CD to pay Rs.3,09,99,873/- towards the amount outstanding under the sales invoice dt.31.03.2021, along with interest at the rate of 18% p.a. and a sum of Rs.1,99,299/- in view of non-issuance of TDS Certificates. The said Notice was duly served upon the CD on 13.01.2022.
- (i) In response to the same, the CD issued a completely untenable reply dated 25.01.2022. The OC issued a rejoinder dated 03.02.2022 denying the allegations of the CD, and once again called upon the CD to discharge its liability towards the OC.

- (j) Further, on 24.02.2022, the OC filed a private complaint against the CD and its Directors, for offenses punishable u/s 138 of the NI Act, 1882.
- (k) The OC issued a Demand Notice dt.01.03.2022 to the CD calling upon it to pay a sum of Rs.3,19,73,902/- which includes the interest amount of Rs.9,74,029/-. In response, the CD issued a completely untenable reply dated 09.03.2022 to the OC, wherein, the CD mischaracterised the criminal proceedings initiated by the OC against the CD and its Directors u/s 138 of the NI Act, 1882 as constituting a dispute. CD further alleged that the said letters of undertaking had been allegedly issued by the CD under coercion and hence, the same was allegedly not binding upon the CD.
- (l) It is stated that such allegations were not raised by the CD at any point of time prior to the issuance of its reply notice dated 25.01.2022, to the legal notice issued u/s 138, despite the latter of the LoUs having been issued as far back as August, 2021. On the contrary, the CD partially acted on the terms of the letter of undertaking dated 27.08.2021 by making payments towards delay penalty for the period between July 2021 and November 2021, as agreed under the said letter. Further, even in its email dated 19.11.2021, the CD yet again acknowledged its liability to pay the amounts due to the OC and sought further time to do so.
- (m) It is also stated that no real or tenable disputes have been raised by the CD in its response dated 09.03.2022, nor do any such disputes even exist. Thus, the debt of the CD towards the OC stands acknowledged and admitted by the CD. Hence, the Petition.
- (n) In support of its case, the Petitioner *inter alia* filed the following:
 - i. *Copies of Bank Return Memos dated 26.07.2021, 12.11.2021 and 03.01.2022;*

- ii. *Copy of FY 2019-20 Annual Returns filed by the CD in Form No. MGT-7;*
- iii. *Copy of FY 2019-20 Financial Statements filed by the CD in Form No.AOC-4;*
- iv. *Copy of Demand Notice dated 01.03.2022 issued to the CD under the I&B Code, 2016;*
- v. *Copy of the PO dated 10.12.2019 bearing No.245 issued to OC;*
- vi. *Copy of Sales Invoice dated 31.03.2021 issued to the CD;*
- vii. *Letters of Undertaking issued by CD dt.31.03.2021, 27.08.2021;*
- viii. *Reply Notice dated 09.03.2022 issued to the OC;*
- ix. *Record of Financial Information in Form-C issued by NeSL.*

5. Pursuant to the issue of notice, Respondent filed its statement of objections *vide* Diary No.2572 dated 15.06.2022 by *inter alia* contending as under:

- (a) All the sums claimed by the Petitioner have been and are disputed. These disputes were in existence much prior to the issuance of Demand Notice dated 01.03.2022.
- (b) The Respondent was awarded a prestigious OFDM Project by Bharat Electronics Ltd ('BEL'), for which the CD approached the OC on a sub-contractual basis for the supply of 4 items, namely, (i) Controller Cards (132 Quantity) (ii) Front Panel (128 Quantity) (iii) TX (128 Quantity) (iv) RX (512 Quantity) *vide* Purchase Order No.245 dated 10.12.2019. Total value of Contract between the OC and CD was Rs.3,41,75,876/-. The designs created by BEL were given to the Petitioner and the Petitioner had indicated its willingness as well as represented that they possessed the technical ability to manufacture the same.
- (c) It is stated that there were no difficulties in providing item nos. (ii), (iii) and (iv) by the Petitioner as mentioned in the PO dated 10.12.2019 and the payments for those items have been made by the Respondent. However, the Petitioner was unable to assemble item no. (i), i.e. the Controller Card and even until, June 2021; the Respondent has sent 3

emails dated 07.01.2020, 16.04.2020 and 31.07.2020 describing failure of the Petitioner in fulfilling their contractual obligations.

- (d) The Petitioner supplied 14 Controller Cards for the OFDM Project and none of these Cards were able to be integrated into the Project successfully, the proof of failure as shown on the website of the BEL is annexed as Annexure-R7. Thus, the Respondent faced losses of the 14 Controller Cards and was forced to source fresh raw materials for creating those cards completely anew, for which the Petitioner is liable to reimburse the losses borne.
- (e) An email dated 16.02.2021 was sent to the Petitioner stating clearly that the faulty assembling of the Controller Cards was responsibility of the Petitioner and that there was no ground to cash the cheque of the Respondent in an illegal/arbitrary manner. It also highlighted that there was no delivery of assembled products; therefore the question of payment does not arise.
- (f) Upon failure of the Petitioner in assembling of the Controller Cards, the Respondent approached BEL for assembling the Controller Cards at an additional cost which was borne by the Respondent. BEL has further issued a new PO dated 20.07.2021 to the Respondent along with revised rates, and therefore a loss is being borne by the Respondent.
- (g) From the above, there exists a valid and ongoing dispute between the Parties which is not resolved or fully quantified as of yet. It is clear that the Respondent has taken the raw materials because of the Petitioner's inability to complete the work contracted to them. Hence, there exists a bonafide dispute between the Parties as the Petitioner is responsible for the losses incurred by the Respondent on account of failure to complete the work that had been undertaken by the Petitioner as per the PO dated 10.12.2019.

- (h) As per Annexure-H5, the Respondent had clearly indicated that there was a failure on the part of the Petitioner in supplying the controller cards that was expected and agreed upon. It clearly highlighted that there was fault in the assembling process that was undertaken by the Petitioner because of which Respondent endured financial hardships. The said Annexure also highlights that the Petitioner was unsuccessful in completion of the work.
6. Subsequently, the Petitioner filed Rejoinder *vide* Diary No.2811 dated 30.06.2022, by *inter alia* stating as under:
- (a) The CD does not deny its obligation to pay the OC for the goods / raw material supplied. The material relied on by the CD in relation to such contentions is evidently superseded by the Letters of Undertaking ('LoUs') issued by the CD to the OC.
- (b) In respect of the period between December, 2019 and 31.03.2021, the disputes sought to be made out are twofold (i) that the OC did not manufacture certain products catering to specifications of the CD; and (ii) that the CD was coerced to issue the first of the LOU dt.31.03.2021. The said LOU would show that disputes, if any, pertaining to the aforementioned period stood closed/resolved by the parties. Further, the email exchanges involving the parties and BEL between 16.03.2021 and 31.03.2021 would evidence the fact that the contentions are merely an afterthought.
- (c) In respect of the period between 01.04.2021 until the initiation of this CP, the disputes sought to be made out are again twofold (i) that the CD was coerced to issue the second of the LOUs dated 27.08.2021; and (ii) the CD allegedly took pity on the alleged dismal financial condition of the OC and made payments towards interest on the amounts due and payable by the OC, and thus, the said LOU and payment allegedly

cannot be treated as an acknowledgement of its liability. A perusal of the second of the LOUs show that disputes, if any, stood closed/resolved by the parties. Further, email exchanges between the parties between 02.11.2021 and 30.12.2021 would show the fact that the contentions are merely an afterthought.

(d) Although the CD claims to have been coerced by the OC and the police to issue the said LOUs, the CD makes no reference to any complaint and/or other legal action initiated by it in this regard.

7. Vide Diary No.1234 dated 02.03.2023, the Petitioner filed its written submissions by *inter alia* further stating as under:

(a) On 19.11.2021, CD issued another email (Annexure-S of Rejoinder) categorically admitting the total balance amount payable as being Rs.3.09 Crores and proposed a payment plan to complete making the entire payment between 15.12.2021 and 30.01.2022. However, the CD failed to adhere the same. Again on 30.12.2021, the CD issued another email (Annexure-U of Rejoinder), admitting in no certain terms its liability to make payment of the invoiced amount to the OC, particularly admitted that CD was in dire financial condition and that had disabled the payment to the OC.

(b) Given the continuous procrastination by CD, the OC re-presented the Cheque No.007994 with its Banker on 01.01.2022, which came to be dishonoured on 03.01.2022. This time the cheque was dishonoured as the CD had instructed the Banker to stop payment. Further thereto the OC issued Form 4 Demand Notice on 01.03.2022, to which the CD issued an untenable reply with moonshine defence on 09.03.2022.

(c) The CD filed its defence contending that the cheques and undertakings were issued under coercion; there were pre-existing disputes between the parties; and the invoiced amount was incorrect etc. The said

disputes came to be raised only after notice regarding dishonour of the Cheque and notice under Form-4 IBC issued by the OC.

- (d) The reading of Annexures P & Q (part of Rejoinder) would clearly show that the OC, CD, BEL mutually agreed that manufacture of controller cards would be undertaken by BEL and that the OC will not be required to undertake such manufacture; that instead, all that the OC was required to do was supply raw materials required for manufacturing controller cards.
 - (e) Pursuant to such agreement / undertaking, the OC supplied necessary raw materials to the CD under the Invoice, and CD has in turn forward-supplied the same to BEL and admittedly, BEL not raised any concerns regarding quality or quantity supplied by it, hence, there is no question of any alleged loss being computed by the CD for the same. Thus, there are no pre-existing disputes.
 - (f) The CD's contention that the OC had allegedly held the raw materials hostage and coerced the CD into accepting delayed delivery of the same under the Invoice and Undertaking, are untenable for the reason that the CD could always have procured raw materials from elsewhere, and there was no compulsion for the CD to procure the same from the OC alone.
 - (g) In the proceedings under the NI Act, the Ld. Magistrate vide Judgment dated 11.01.2023 has categorically held that (i) the CD was liable to pay the OC amount under the Invoice; (ii) the cheque and undertaking were not issued by the CD under any coercion or force by the OC (iii) no valid disputes were raised by the CD with respect to amounts due and payable under Invoice.
- 8.** Vide Diary No.1190 dated 01.03.2023, the Respondent filed its written arguments by *inter alia* further contending as under:

- (a) The Respondent has been contracted by Bharat Electronics Ltd. (BEL) for an OFDM Project. The Respondent in turn had sub-contracted the Petitioner for 4 products *vide* Purchase Order dated 10.12.2019. The products under the P.O. which were required are listed below:

<i>Sl. No.</i>	<i>Product</i>	<i>Cost per Product (Rs.)</i>	<i>Total Cost (Rs.)</i>	<i>Delivery Status</i>
1.	Controller Cards	2,37,825/-	3,13,92,900/-	Failed
2.	Front Panel	12,556/-	16,07,168/-	Delivered
3.	TX	3,346/-	4,28,288/-	Delivered
4.	RX	1,460/-	7,47,520/-	Delivered

- (b) From the above, it is seen that the largest component of the PO were the controller cards which the Petitioner has admittedly not been able to assemble as per the requirements of the PO and thus failed in its obligations.
- (c) Owing to Petitioner's failure, the Respondent agreed with BEL to have the assembly of the controller cards at a higher cost than what was agreed with the Petitioner causing losses which are yet to be quantified. Thereafter, the Petitioner coerced the Respondent to purchase the remaining raw materials at an exorbitant rate of Rs.3,39,99,873/-.
- (d) Further, the Petitioner knowing that Respondent was under tremendous pressure from BEL to complete the OFDM Project illegally withheld the raw materials until a lopsided Letter of Undertaking (LOU) dated 31.03.2021 was given to the Petitioner, wherein, one of the conditions was that the Respondent could not dispute the quality or quantity of goods that were being sold. This clearly illustrates that the Respondent was under economic duress when signing the LOU.
- (e) The LOU dt.27.08.2021 clearly illustrates that exists a bonafide and dispute between the parties as the said LOU had to be procured in Sadashiv Nagar Police Station. The Respondent has clearly signed the same when under threat of arrest before the Police Station.

- (f) The instant CP is a mala fide attempt to extract amounts beyond the scope of the original PO by charging interest and a service charge which is not payable as, delays, if any, are solely because of the inability of the Petitioner to assemble the controller cards.
- (g) The Respondent is a going concern and does not have a problem in servicing its debts, however, the alleged debt owed to the Petitioner is disputed. It has also paid the Petitioner a sum of Rs.30 Lakhs on 11.11.2021, and enclosed the Fixed Deposit Summary showing amounts of Rs.3.8 Cr. showing the financial solvency of Respondent.
- (h) In support of its contentions, Respondent relied on following decisions:
- i. *Bengal Stone Co. Ltd. vs. Joseph Isaac Joseph Hyam and Anr. (1917) SCC OnLine Cal 258;*
 - ii. *Agarwal Veneers vs. Fundtonic Services Pvt. Ltd. in Company Appeal (AT) (Ins.) No.968 of 2020;*
 - iii. *Chuni Lal vs. Maula Bakhsh (1934) SCC OnLine Lah 499;*
 - iv. *Rajratan Babulal Agarwal vs. Solartex India Pvt. Ltd. (2023) 1 SCC 115;*
 - v. *Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353.*
- 9.** Pursuant to the order dated 11.11.2022, the Respondent had filed additional documents *vide* Diary No.5312 dated 08.12.2022. The same was taken on record.
- 10.** Heard Ms. Parina Lalla, Ld. Counsel for the Petitioner and Shri Rajesh Chander Kumar Rohra, Ld. Sr. Counsel for the Respondent and perused the pleadings on record.
- 11.** It is seen that the instant Petition has been filed by M/s. MRO-TEK Realty Limited seeking to initiate CIRP against the Corporate Debtor – M/s. Dexcel Electronics Designs Private Limited for defaulting to pay the outstanding amount due and payable in respect of the products supplied to the

Corporate Debtor under Invoice dated 31.03.2021. As seen from Part-IV of Form-5 of the Petition, the total amount claimed to be in default stands at Rs.3,19,73,902/- including interest as on 28.02.2022 (Rs.9,74,029/-), with the default date being 22.07.2021. This Petition has been filed by the Operational Creditor u/s 9 of the Code on 28.04.2022, which is within the limitation period.

- 12.** The Corporate Debtor raised the Purchase Order dated 10.12.2019 on the Operational Creditor for purchasing Controller Card (132 Nos.), Front Panels (128 Nos.), TX (128 Nos.) and RX (512 Nos.), being electronic components. The total value of the Contract as per the said PO between the Petitioner and Respondent was Rs.3,41,75,876/-. The OC was required to procure raw materials and manufacture the same on the basis of manufacturing drawings provided by CD. The said goods were required to be supplied by CD to Bharat Electronics Limited (BEL).
- 13.** The Operational Creditor raised Invoice dated 31.03.2021 for a total sum of Rs.3,39,99,873/- on the CD for supply of the above mentioned raw materials to the CD. Shri Amit Kumar Sinha, Managing Director of the Corporate Debtor *vide* letter dated 31.03.2021 addressed to the CFO of MRO-TEK Realty Limited has stated as under:

"1. We hereby accept and confirm for taking delivery of the goods from M/s. MRO-TEK Realty Limited, Bangalore vide Invoice No. SITK 2021-0228 dated 31st March, 2021, for Rs.3,39,99,873/- (Rs. Three crores thirty nine lakhs ninety nine thousand eight hundred and seventy three only) and the same is in order with respect to quality and quantity and no further deviation will be claimed by us in this regard.

2. We are unconditionally agreed to deposit a Postdated Cheque (PDC) of Rs.3,39,99,873/- (Rs. Three crores thirty nine lakhs ninety nine thousand eight hundred and seventy three only) against the Goods or Services to be supplied by MRO-TEK against our PO No.245 dated 10.12.2019 and Sale Invoice No. SITK 2021-0228, dated – 31st March 2021.

3. The payment of the above said invoice will be made by us within 45 days from the date of delivery of components.

4. Further we agreed that in no circumstance the aforementioned PDC will be taken back or send for stop payment request to the respective Bank unless the settlement towards supplies made by MRO-TEK is made by any other Payment means.

5. We hereby accept and undertake to pay the Interest to be charged by MRO-TEK on the paid parts from 1st March, 2021 to till date of settlement of the above said invoice.”

14. The Corporate Debtor *vide* letter dated 27.08.2021 addressed to the Operational Creditor has *inter alia* stated that the delivery happened on 07.06.2021. Further, the Corporate Debtor unconditionally agreed for the deposit of the PDC against the Goods or Services supplied by MRO-TEK on 07.06.2021. They submitted Cheque No.007994 dated 11.11.2021 for an amount of Rs.3,39,99,873/- by further agreeing therein that in no circumstance the aforementioned PDC will be taken back or send for stop payment request to the respective Bank, unless the settlement towards supplies made by MRO-TEK is made by any other Payment means. However, upon presentation of the said Cheque, it came to be dishonoured on 12.11.2021. Subsequently, the CD *vide* email dated 11.11.2021 *inter alia* promised to make first tranche Rs.30,00,000/- out of the entire liability. *Vide* another email dated 19.11.2021 addressed to the OC, the CD has proposed a payment plan for a total amount of Rs.3.09 Crores to be paid during 15.12.2021 to 30.01.2022.

15. Pursuant to the above, the CD again failed to adhere the same as proposed by it in email dated 19.11.2021. Subsequently, *vide* another email dated 30.12.2021 issued to the OC, the CD has *inter alia* stated that they have been in default on its commitment and sought time till January end / early February, 2022. The OC re-presented the Cheque bearing No.007994 with its banker on 01.01.2022, which was again dishonoured on 03.01.2022, as the CD had instructed to the Banker to stop payment. Therefore, Demand

Notice dated 01.03.2022 in Form-4 has been issued by the Operational Creditor on the Corporate Debtor, to which the CD issued an untenable reply *vide* letter dated 09.03.2022 *inter alia* mentioning the existence of pre-existing dispute between the Parties.

16. The Respondent contended that disputes were pre-existing by virtue of the alleged failure of the OC to manufacture controller cards that form a part of said PO, and that since the said disputes were already existing and remained unresolved there is allegedly pre-existing disputes. In this regard, the Petitioner has drawn our attention to email dated 17.03.2021 issued by the CD to the OC which *inter alia* stated that "*the permission has been given to BEL to produce balance baseband board themselves as you can see in the mail below. Request you to kindly initiate the kitting so that we can deliver this to BEL asap. This needs to be done soon so that billing for all parties is taken care.*" Therefore, the Petitioner states that the OC, CD, BEL mutually agreed that the manufacture of controller cards would be undertaken by BEL and that the OC will not be required to undertake such manufacture; that instead, all that the OC was required to do was supply raw materials required for manufacturing controller cards.

17. The above discussion reveals that the Respondent's major contention is existence of pre-existing dispute; and it has been claimed that the LoU / Post Dated Cheques have been obtained under duress. However, it is noticed from the above discussion that the Post Dated Cheques were given by the Corporate Debtor on three occasions, and every time these cheques were dishonoured / 'payment stopped'. The Letter of Undertaking was given by the Corporate Debtor on two different occasions, in which the delivery of the goods were acknowledged on 07.06.2021, liabilities for payments were admitted and undertakings were categorically given for the payments; for which the PDCs were also enclosed. Such a coercion can occur at one instance; but here repeatedly the LoUs were given and PDCs

were enclosed as security on three occasions. If any such coercion or duress was there, the CD wouldn't have given these undertakings and PDCs repeatedly, one after the other. Therefore, the contention that the Letter of Undertaking was obtained or the PDCs were given under coercion or duress cannot be accepted. It is seen that when the Controller Cards could not be supplied by the OC, it was mutually agreed between the OC, CD and the Bharat Electronics Limited that the manufacture of Controller Cards would be undertaken by BEL itself and for this purpose the OC was required to supply the raw material required. Accordingly, the supply of this raw material was made to the CD by the OC and the outstanding payment pertained to this only. It has rightly been pointed out by the Petitioner that in case there was a coercion or any such issue; the CD could have very well sourced the raw material from elsewhere, instead of sourcing it from the Petitioner itself.

- 18.** According to the above agreement, the OC raised the Invoice dated 31.03.2021 for a total amount of Rs.3,39,99,873/- on the CD for the supply of the raw material and the CD *vide* its letter dated 31.03.2021 and 27.08.2021 confirmed taking the delivery; stating that the same was in order in so far as the quality and quantity is concerned. Therefore, no disputes were raised at this instance. In the same letter the CD had given an undertaking for payment along with the issue of PDC for the aforesaid amount. However, as discussed above, three times the PDCs given could not be encashed due to 'Insufficient Funds / Stopped Payment', the first time on 26.07.2021 and subsequently on 11.11.2021 and 31.12.2021. It has been pointed out by the Petitioner that in the earlier correspondences with the Petitioner, the CD had admitted the liability, in particular, *vide* email dated 19.11.2021 and 30.12.2021. In fact, after the Cheque dated 11.11.2021 was returned by the Bank with the endorsement 'Exceeds Arrangement', after mutual correspondence, the CD was again granted

time till 31.12.2021 to clear the dues, failing which the OC could present the same Cheque to recover the amounts. However, this was also dishonoured with the endorsement 'Stopped Payment'. Thus, till this point of time no such issues were raised by the Corporate Debtor.

19. In view of the above, the OC issued a Legal Notice dated 07.01.2022 calling for the payment of the outstanding amount of Rs.3,09,99,873/- along with interest etc. followed by Demand Notice dated 01.03.2022. It is pointed out by the Petitioner that only after issuing the Demand Notice dated 01.03.2022, the Respondent raised the issue of a pre-existing dispute and mischaracterised the criminal proceedings initiated by the Operational Creditor u/s 138 of the Negotiable Instruments Act, 1881 as a 'dispute'. It has been correctly pointed out by the Petitioner that there was no mention of any pre-existing dispute prior to this and it is merely an afterthought. It is also pointed out that with regard to the supply of raw material as mutually agreed by the Parties along with BEL, no concern was raised regarding the quality or quantity of raw material, either by the Corporate Debtor or by BEL and the same was continued to be supplied by the Petitioner for the manufacture of the Controller Cards by BEL. Accordingly, the contention of the Corporate Debtor regarding there being a pre-existing dispute is not tenable.

20. We have carefully considered the arguments of the respective Counsels and their pleadings. As stated supra, the total default amount is Rs.3,19,73,902/- as on 28.02.2022 and CD *vide* email dated 19.11.2021 has proposed the payment of Rs.3.09 Crores to complete the entire payment between 15.12.2021 and 30.01.2022. Therefore, the CD clearly acknowledged the said due amount and default thereof in its commitment. The CD has not denied the delivery of raw materials received from the OC. Therefore, the default amount is more than Rs.1 Crore and since the same has not been paid by the CD, the default is established.

21. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the operational debt and for the default amount being above Rs.1,00,00,000/- (Rupees One Crore Only), the **Petition** is **admitted** in respect of **Respondent - M/s. Dexcel Electronics Designs Private Limited** u/s 9 of the I & B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- ii. Transferring, encumbering, alienating or disposing off by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
- iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of sub-section (1) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector*

regulator or any other authority, and to a surety in a contract of guarantee to a Corporate Debtor.

The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

- 22.** The Operational Creditor has proposed Mr. Motappa Thimmarayaswamy, a qualified insolvency professional having Registration No. IBBI/IPA-003/IP-N00091/2017-18/10891 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Affidavit dated 05.04.2022 and Written Consent of the IRP in Form-2 dated 04.04.2022 have been placed on record at pages 173-176 of the CP, wherein, he *inter alia* affirmed that he is eligible to be appointed as an IRP in the case of the Corporate Debtor and that no disciplinary proceedings are pending against him with the Board or IPA ICMAI.
- 23.** The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Motappa Thimmarayaswamy, and there is nothing adverse against him. Therefore, the Bench hereby appoints **Mr. Motappa Thimmarayaswamy**, bearing Registration No. IBBI/IPA-003/IP-N00091/2017-18/10891 with his address at #228, 5th Main, 5th Cross, KG Nagar, Bengaluru-560019 having E-mail: swamymotappa@gmail.com as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016. Since the copy of AFA is not filed by the IRP, the same is to be filed by him within one week from the date of receipt of copy of this order.

- 24.** The Operational Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakhs Only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
- 25.** The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
- 26.** A copy of the order shall be communicated to both the Parties. The learned Counsel for the Petitioner shall deliver a copy of this Order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this Order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

jsr

Sd/-
T. KRISHNAVALLI
MEMBER (JUDICIAL)