



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 810/IBC/MB/2022**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 6  
of the Insolvency and Bankruptcy  
(Application to Adjudication Authority)  
Rule 2016)

*In the matter of*

**M/s Hydro Care Fluid Power Systems.**

Having registered office at: G. Lakshmanan  
Proprietor, Hydro Care Fluid Power  
Systems No. 171 KBAR Road, Austin Town,  
Bengaluru, Karnataka- 560047

.....Operational Creditor

*Vs*

**M/s Larsen & Turbo Limited**

Registered office at: L&T House Ballard  
Estate Mumbai, Maharashtra 400001

.....Corporate Debtor

**Order delivered on: 13.01.2023**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)  
Hon'ble MS. Madhu Sinha, Member (Technical)

**For the Applicant:** Mr. Prabhakar Radhavendra, Advocate

**For the Respondent:** Mr. Amir Arsiwala, Advocate

**Per: H.V. Subba Rao, Member (Judicial)**

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1. The above Company Petition is filed by *M/s Hydro Care Fluid Power Systems*. hereinafter called as Operational Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against *M/s Larsen & Turbo Limited*. called as Corporate Debtor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called “Code” read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Operational Debt of Rs. 1,88,28,379.
2. The submissions of the Operational Creditor are as follows:
  - i. The Operational Creditor is registered under MSME Act and are engaged as authorized distributor and service provider for Parker Hannifin Corporation in India and having vast experience in the field of Hydraulics over a decade, has done many remarkable projects with successful solutions for various customers in the field of Automotive, Mining, Construction, Railway, Earth Moving, Defense, Steel, Marine, wind Engineering, Test Labs and fatigue test applications. Supporting the customers in the field of erection/commissioning and service the hydraulic systems including annual maintenance with rich experience of engineers.
  - ii. The Corporate Debtor is a Public Limited Company registered under Companies Act, 1913 and is into the business of Engineering Construction, Manufacturing, Technology and Financial Services. The Corporate Debtor Construction Division involved to build Railway wheel factory at Bela Village, Saran District of Bihar, for Civil and Electrical work, for that Operational creditor supplied Hydraulic and Pneumatic Systems.

iii. During the period starting from 23<sup>rd</sup> October 2010, to 12<sup>th</sup> June 2013, with Twenty-Seven Invoices (27) invoices of Amounting to Rs.15,52,13,393.14 (Rupees Fifteen Crore Fifty-Two Lakh Thirteen Thousand and Three Hundred and Ninety-Three and fifteen Paise Only) of that received 14,78,42,727.78 was received (Rupees Fourteen Crore Seventy-Eight Lakh Forty-Two Thousand Seven Hundred and twenty-seven and Seventy-Five Paise only) was received, Balance amount of Rs. 73,70,665.36 (Rupees Seventy-Three Lakh Seventy Thousand Six Hundred and Sixty-Five and Thirty-Six Paise Only) was due which is retention money. Including interest till sending of demand notice dated 19<sup>th</sup> December, 2021 amounting to Rs. 1,88,28,379.03 became overdue Corporate Debtor claimed that department of Railway raised the defect in quality of service further settled through arbitration which is not come to the ambit the scope of services of Operational creditor, for the same corporate Debtor in their letter dated 25<sup>th</sup> June, 2019 Sent a Statement of account for withholding of Rs. 22,77,000/- and agreed to repay the remaining amount of Rs. 48,61,971/- which is not accepted by the Operational Creditor as there is no defect in services provided. Further, Corporate Debtor completely abscond to respond to Operational creditor, even for accepted due, it leads the Operational Creditor to undergone huge financial burden and loose Opportunity of business. Further, Operational creditor to come out of the financial burden, put all its effort by communicating through mails and post attached as Annexure- 6 and personal visit, which was completely ignored by Corporate debtor, instead for just formality they sent replied saying required to submit invoices through QR sheet, for that no one is available to co-ordinate, here significant thing is Corporate Debtor seeking



for retention amount but not the whole invoice amount which was cleared earlier.

- iv. Finally, after exhaustion of all the available options, the Operational creditor issued a Demand Notice u/s 8 of Insolvency and Bankruptcy Code, 2016. Notice dated 19.12.2021 was sent, where in the Corporate Debtor through their reply letter dated 17.01.2022 ignored by saying approach through QR process for that no one is available to guide, importantly earlier for several follow ups also they are given TARY reason, which shows the ignorance to repay the accepted dues.
  - v. In light of the above, due to failure of the Corporate Debtor to pay its admitted dues, despite several opportunities, request and pleas, the Operational Creditor has approached this Hon'ble Tribunal, in these said circumstances, the Corporate Debtor is unable to discharge its legally admitted due and therefore, it is just and equitable to commence an insolvency resolution process against the corporate Debtor.
3. The Corporate Debtor filed a detail affidavit in reply of Promod Kumar Das, the authorized representative of the Corporate Debtor opposing the above Company Petition. The submissions of the Corporate Debtor are hereinunder:
- i. The Corporate Debtor submits that the Operational Creditor has failed to crystalize the alleged debt and that his claim is merely based on his any substantial proof. Additionally, assuming without admitting even if at all the claim of the Operational Creditor is proven to exist, the same is time barred and therefore is not maintainable.
  - ii. The Corporate Debtor further submits that for reasons more particularly set out herein, the alleged claim amount of the Petitioner on its own admission is below the threshold amount



of Rs. 1 Crore and therefore the present Petition is not maintainable. I say that the Ministry of Corporate Affairs had issued a notification dated 24.03.2020, whereby the threshold limit for applications filed under Section 7 or 9 of the IBC, on or after 24.03.2020, was increased to Rs. 1 Crore even for defaults that had occurred before 24.03.2020. Accordingly, the minimum threshold under Section 4 of IBC was also increased to Rs. 1 Crore.

- iii. The Petitioner has portrayed incorrect facts in the instant Petition with a view to mislead and prejudice the attention of this Hon'ble Tribunal from the issue at hand. For reasons provided hereinafter, the reliefs as prayed for, in the instant petition ought to be dismissed.
- iv. The Corporate Debtor is a conglomerate company, with business interest in engineering, construction, manufacturing, technology and financial services, having its registered office at L&T House, Ballard Estate, Mumbai 400 001. The Corporate Debtor is counted amongst world's top five construction companies. The said business of the Corporate Debtor has mushroomed and blossomed owing to the hard work, skill and labour put in by its team of dedicated employees. The Corporate Debtor has also diversified its business and has entered key areas like cement, information technology, communications, construction and allied equipment, finance, packaging of industrial products and medical equipment. In addition, thereto, the Corporate Debtor has also entered into specific alliances and has set up joint venture companies for manufacturing construction and hydraulic equipment, loader backhoes, high pressure hydraulic components and systems, and the like. On account of superior quality of goods and the excellent services rendered



over the last more than 8 decades all across India and globally, enormous goodwill and reputation has come to be generated therein. The Corporate Debtor's goods and business have achieved a global recognition and they have been bestowed with various awards and recognitions. The Corporate Debtor has participated in the core areas of India's development and has scripted some of the most magnificent achievements and success stories in the annals of the Indian Industry.

- v. The Corporate Debtor was awarded a Tender to set up Indian Railway Wheel Manufacturing Plant at Bela Chhapra, Bihar for the manufacturing of 1,00,000 Rail Road Cast Steel Wheel per annum (the "Project"). Post award of Tender, a contract was executed between the financial services, having its registered office at L&T House, Ballard Estate, Mumbai 400 001. The Corporate Debtor is counted amongst world's top five construction companies. The said business of the Corporate Debtor has mushroomed and blossomed owing to the hard work, skill and labour put in by its team of dedicated employees. The Corporate Debtor has also diversified its business and has entered key areas like cement, information technology, communications, construction and allied equipment, finance, packaging of industrial products and medical equipment. In addition, thereto, the Corporate Debtor has also entered into specific alliances and has set up joint venture companies for manufacturing construction and hydraulic equipment, loader backhoes, high pressure hydraulic components and systems, and the like. On account of superior quality of goods and the excellent services rendered over the last more than 8 decades all across India and globally, enormous goodwill and reputation has come to be generated therein. The Corporate Debtor's goods and business have



achieved a global recognition and they have been bestowed with various awards and recognitions. The Corporate Debtor has participated in the core areas of India's development and has scripted some of the most magnificent achievements and success stories in the annals of the Indian Industry.

- vi. During the period starting from 08th March 2010 to 12th February 2014, the Operational Creditor raised Twenty-Nine invoices totally amounting to Rs. 15,52,12,759.78 (Rupees Fifteen Crores Fifty-Two Lacs Twelve Thousand Seven Hundred and Fifty Nine and Paise Seventy Eight only) out of which the Corporate Debtor paid to the Operational Creditor an amount of Rs. 14,8073,789.78 (Rupees Fourteen Crores Eighty Lacs Seventy-Three Thousand Seven Hundred and Eighty-Nine and Paise Seventy-Eight only). I say that with regard to the balance amounts, there were serious disputes between the parties regarding the performance and execution of the scope of work whereby the Operational Creditor had miserably failed and neglected to perform their contractual obligations under the Purchase Orders, due to which the Corporate Debtor had to suffer heavy losses due to the fault of the Operational Creditor. In fact, I say that the Corporate Debtor is entitled to claim a heavy compensation from the Operational Creditor because of supply of substandard quality of materials to the Corporate Debtor due to which the East Railway withheld the payments of the Corporate Debtor after which, the dispute between the Corporate Debtor and Eastern Railway was referred to Arbitration proceedings wherein a lot of claims raised by the Corporate Debtor were disallowed by the Learned Arbitrator. The Corporate Debtor further submits that because of the non-performance of the contractual obligations on the part of the Operational Creditor, the

Corporate Debtor had to not only suffer heavy costs towards the Arbitration proceedings but also had to suffer losses for the disallowed claims, which were due to the entire fault of the Operational Creditor failing to perform its part of the obligation.

vii. The Operational Creditor has in the Particulars of Claim claimed an alleged amount of Rs, 1,88,28,379/- (Rupees One Crore Eighty Eight Lacs Twenty Eight Thousand Three Hundred and Seventy Nine only). without giving any break-up or details of the alleged claim. Further state that the Operational Creditor has mischievously mentioned the Date from which the alleged Debt fell due as 29th June 2019.

viii. The Corporate Debtor hereby raises a preliminary objection with regard to the maintainability of the present Petition and alleged claim of the Operational Creditor. The claim of the Operational Creditor is hopelessly time barred and cannot be allowed. The Petition filed by the present Petitioner claiming to be Operational Creditor has been filed in the year 2022 for the recovery of an alleged outstanding sums arising out of invoices which were raised between 23rd October 2010 to 12th June 2013, all of which have become hopelessly time barred under the Law of Limitation. The Corporate Debtor submits that on this ground alone the present Petition deserves to be dismissed with costs.

#### **FINDINGS/OBSERVATIONS**

4. Heard Mr. Prabhakar Raghavendra, counsel appearing for the Operational Creditor and Mr. Amir Arsiwala, counsel appearing for the Corporate Debtor.
5. It is an admitted case that the subject matter of the claim arise out of various invoices covering from 08 September 2009 till 12 June 2013. The above Company Petition being filed on 08.08.2022



prima facie appears to be barred by limitation. The learned counsel appearing for the Operational Creditor invited the attention of this Tribunal to an email dated 25.06.2019 addressed by the Corporate Debtor to the Operational Creditor whereunder the Corporate Debtor admitted an amount of Rs. 48,61,971/- and therefore, submits that the above Company Petition is within three years from the date of the above email.

6. However, the learned counsel appearing for the Corporate Debtor refuted the above submissions contending that the demand notice in the present case was issued by the Operational Creditor on 09.12.2021 and the present email is much prior to issuing the said demand notice and the Corporate Debtor merely called upon the Operational Creditor to confirm the outstanding of Rs. 48,61,971/- with a further caveat that they will make payment of the above amount only on receipt of full and final claim settlement for which there was no reply from the Operational Creditor which itself constitute a pre-existence of dispute much before issuing the demand notice and the said email does not constitute an acknowledgement of debt.
7. At this stage, when this tribunal enquired the counsel appearing for the Operational Creditor as to what is their objection for accepting the above amount for which he has replied that the Operational Creditor is also insisting for payment of interest etc. and did not agree for the above amount.
8. As rightly contended by the Counsel appearing for the Corporate Debtor, the above email cannot be construed as an admission of liability since the above amount admitted in the above email is only approximately  $\frac{1}{4}$  of the amount claimed by the Operational Creditor and not for the entire claim. If the above email is not considered as admission of liability, the Company Petition is clearly barred by limitation. Similarly, if the above email is



considered as admission of liability, it would amount to pre-existence of dispute as the above admission is not an unconditional one for the entire amount that too with a further caveat to give full and final claim certificate by the Operational Creditor and thus it would not qualify as an acknowledgment of debt within Section 25(3) of the Indian Contract Act.

9. Thus, viewing from both angles, the above Company Petition is liable to be dismissed. Accordingly, the above Company Petition is dismissed.

Sd/-

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**