NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
CP(IB)/24(MP)2024

Order under Section 9 IBC

IN THE MATTER OF:

Draeger India Pvt Ltd ....**Applicant**
V/s
Decent Medical Equipment Systems Pvt Ltd ....**Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 31/07/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/- Sd/-

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

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THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT INDORE

CP(IB) No. 24 of 2024

[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]

Draeger India Private Limited

10th Floor, Commerz II, International Business Park,

Oberoi Garden City, Off Western Express Highway,

Goregaon (East), Mumbai – 400063 ....**Applicant**

Versus

Decent Medical Equipment Systems Private Limited

519-MR-5, Mahalaxmi Nagar,

Indore, Madhya Pradesh **...Respondent**

CORAM:

Shri Brajendra Mani Tripathi, Hon'ble Member (Judicial)
Shri Man Mohan Gupta, Hon'ble Member (Technical)

Order Pronounced on 31.07.2026

Appearance:

For the Applicant : Mr. Arnab Ghosh, Adv.

For the Respondent: Mr. Kunal P. Vaishnav, Adv.

JUDGEMENT

1. This petition has been filed by Draeger India Private Limited, the Operational Creditor, under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of the Corporate Insolvency Resolution Process against Decent Medical Equipment Systems Private Limited, the Corporate Debtor, for an alleged default of **Rs. 3,50,20,865.12**. The date of default is stated to be **16.04.2021.**

2. A perusal of Part-I of the application in Form-5 shows that the Operational Creditor is Draeger India Private Limited, a company bearing Corporate Identification Number U51507MH2004FTC143991, with its registered office at Mumbai. The application has been filed through its authorised representative, Mr. Santosh Dakare.

3. Part-II shows that the Corporate Debtor is Decent Medical Equipment Systems Private Limited, bearing Corporate Identification Number U33110MP2014PTC032701, with its registered office at 519-MR-5, Mahalaxmi Nagar, Indore, Madhya Pradesh.

4. Part-III shows that the Operational Creditor has proposed the name of Mr. Jai Prakash Rawat to act as the Interim Resolution Professional. His written consent in Form-2 dated 09.01.2024 is on record.

5. Part-IV shows that the total operational debt claimed is Rs. **3,50,20,865.12,** comprising a principal amount of **Rs. 2,07,41,226.97** and interest of **Rs. 1,42,79,638.15**. The date of default is stated to be 16.04.2021.

6. It is stated that the Operational Creditor is engaged in the business of supplying medical equipment manufactured by its parent company.

7. The case of the Operational Creditor is that it had appointed the Corporate Debtor as its non-exclusive dealer in the State of Madhya Pradesh for the products manufactured by its parent company, on mutually agreed terms. Under the said arrangement, the Corporate Debtor would issue purchase orders upon the Operational Creditor, and the Operational Creditor would supply the equipment in accordance with the terms of the purchase order.

8. It is stated that pursuant to the said arrangement, and to a work order dated 31.03.2020 placed by the Corporate Debtor for the supply of ICU ventilators, the Operational Creditor supplied the medical equipment. The receipt of the supplies was duly acknowledged by the Corporate Debtor on the transporter's receipts.

9. It is stated that upon the supplies being made, the Operational Creditor raised the following invoices towards payment for the equipment supplied, which the Corporate Debtor failed to clear.

Date of Invoice	**Due date**	**Amount (Rs.)**
18.09.2020	17.11.2020	1,01,64,401
18.09.2020	17.11.2020	93,82,524
25.09.2020	24.11.2020	82,43,770
25.09.2020	24.11.2020	62,500
01.03.2021	1.03.2021	10,52,520

It is stated that the parties maintained a running account. The Corporate Debtor made part payments from time to time, which were appropriated against the earliest unpaid invoices.

10. It is stated that after adjusting the part payments, a principal amount of **Rs. 2,07,41,226.97** remained due and payable under the invoices, together with interest at the rate of 18% per annum.

11. According to the Operational Creditor, the last payment made by the Corporate Debtor was by cheque no. 088444 for Rs. 20,00,000, which was dishonoured on 16.04.2021. The Operational Creditor treats the said dishonour as the date of default.

12. It is stated that despite several follow-ups, the amounts due under the pending invoices were not cleared, and the total operational debt of Rs. 3,50,20,865.12, comprising the principal of Rs. 2,07,41,226.97 and interest of Rs. 1,42,79,638.15, remains outstanding.

13. It is stated that, the outstanding amount not having been paid, the Operational Creditor issued a demand notice in Form-3 dated **25.10.2023**, which was delivered to the Corporate Debtor on 30.10.2023.

14. The Operational Creditor has relied upon the following documents: -

    a. Copy of the agreement at **Exhibit D**;
    b. Copy of the purchase order dated 31.03.2020 at **Exhibit E**
    c. Copies of the unpaid invoices raised by the Operational Creditor at **Exhibit G;**
    d. Copies of the transporter's receipts at **Exhibit F;**
    e. Copy of the statement of account (ledger) of the Corporate Debtor maintained by the Operational Creditor at **Exhibit I;**
    f. Copy of the demand notice dated 25.10.2023 at **Exhibit J;**
    g. Copy of the record of default Issued by NeSL at **Exhibit L**

h. Copy of the Original bank certificate dated 25.01.2024 at **Exhibit M**.

Reply submitted by the Corporate Debtor

15. The Corporate Debtor has opposed the petition on three grounds: that the default is covered by Section 10A of the Code; that a dispute existed between the parties before the demand notice was issued; and that the petition is barred by limitation.

16. On Section 10A, the Corporate Debtor submits that the work order was placed on 31.03.2020 and that the invoices relied upon are all dated between 18.09.2020 and 01.03.2021. Since the default arose after 25.03.2020, it is covered by Section 10A, and the proviso to that section bars any application in respect of such default.

17. On the question of dispute, the Corporate Debtor relies on its letter dated 09.03.2021, in which it raised grievances against the Operational Creditor regarding breach of the price committed for the MPPHSCL tender (NIT-152), an unjustified increase in price on the pretext of a 6.16% medical cess, and excessive local transport charges. It also relies on the invocation of its bank guarantee by MPPHSCL on 11.12.2020, which it attributes to the failure of the Operational Creditor.

18. On limitation, the Corporate Debtor submits that the Operational Creditor had earlier issued a notice under Section 8 on 22.04.2022, in which the default was stated to have commenced on 17.11.2020, being the due date of the first

invoice dated 18.09.2020. As the petition was registered on 02.05.2024, it is barred by limitation. It is contended that the Operational Creditor cannot alter the date of default by issuing successive notices.

Rejoinder submitted by the Operational Creditor

19. In rejoinder, the Operational Creditor submits that the petition is maintainable because the parties maintained a running account and the part payments were appropriated against the earliest unpaid invoices. It contends that the last default, namely the dishonour of the cheque on 16.04.2021, occurred after the Section 10A period, and that the Corporate Debtor cannot take shelter under that provision.

20. On the alleged dispute, the Operational Creditor submits that it is a moonshine defence. The Corporate Debtor acknowledged the supplies on the transporter's receipts and raised no objection when the goods were delivered or the invoices were issued. It contends that the grievances in the letter of 09.03.2021 have no bearing on the debt claimed. In support, it relies on the decisions of the Hon'ble NCLAT in the case of **Deepak Modi vs. Shalfeyo Industries Pvt. Ltd. and Ors.** In Company Appeal (AT) (Insolvency) No. 1019 of 2022 *wherein it was held as follows: - However, it is clear that the granite slabs supplied by the Operational Creditor were utilised by the Corporate Debtor and had placed the same in the premises of Airport Authority of Jaipur. There may be plausible reasons for SGB Infra Ltd. to ask the Corporate Debtor to remove the flooring but fact remains that the Corporate Debtor*

had accepted the granite slabs supplied by the Operational Creditor without raising any dispute or objection. On this score itself we are of the opinion that such plea of the Corporate Debtor regarding dispute can be termed as moon shine defence. On this plea there is no reason to accept as if there was pre-existing dispute in between the Operational Creditor and Corporate Debtor. Reliance has also been placed on The Hon'ble NCLAT in in the case of **Rajendra Bhai Panchal vs Jay Manak Steels and Ors.** In Company Appeal (AT) (Insolvency) No. 592 of 2020 have held: - *If a dispute truly exists in fact and is not a hypothetical or an illusory one, then, the 'Adjudicating Authority' is to reject the Application. A defence being a mere bluster can also be rejected by an 'Adjudicating Authority'.*

Analysis and findings:

21. We have heard the learned counsel for both parties and perused the record, including the written submissions filed by both sides.

22. On a consideration of the pleadings and the rival submissions, the following issues arise for our determination:

(i) Whether the default alleged in the petition arose during the period protected under Section 10A of the Code, so as to render the petition not maintainable;

(ii) Whether a dispute existed between the parties, and whether a notice of dispute was received or a record of

dispute exists in the information utility, within the meaning of Section 9(5)(ii)(d).

Issue (i): Section 10A of the Code

i. Section 10A of the Code, inserted by Act 17 of 2020 with effect from 05.06.2020 and extended by the notifications dated 24.09.2020 and 22.12.2020, bars the filing of any application for the initiation of the Corporate Insolvency Resolution Process in respect of a default arising between 25.03.2020 and 24.03.2021, the proviso making that bar permanent. Under Section 3(12), a default is the non-payment of a debt when it has become due and payable; it arises when the debt falls due and is not paid, and not on a later date of the creditor's choosing. The question before us, therefore, is when the default in the present case arose.

ii. The five invoices on which the petition rests, set out in paragraph 9 above, are dated **18.09.2020, 25.09.2020** and **01.03.2021.** all these invoices were due for payment on 17.11.2020,24.11.2020 & 01.03.2021 The work order preceding them was placed on **31.03.2020.** Each of these dates falls within the protected period of **25.03.2020 to 24.03.2021**. On the Operational Creditor's own showing, the debt became due on these invoices and was not paid. The default, therefore, arose during the Section 10A period.

iii. The Operational Creditor seeks to place the date of default on 16.04.2021, being the date on which a cheque of Rs. 20,00,000 issued towards part payment was dishonoured. We are unable to accept this. A cheque issued in part discharge of a debt that has already fallen due does not give rise to a fresh default; at most it is an entry in the running account. The dishonour of such a cheque cannot carry the date of default beyond the date on which the underlying invoices became payable.

iv. The Operational Creditor sought to rely upon the decision of **the Hon'ble NCLAT in *Small Industries Development Bank of India v. Sambandh Finserve Private Limited*** to contend that a default occurring after the Section 10A period sustains the petition notwithstanding earlier defaults within that period. That decision is distinguishable. It arose from a term loan repayable in monthly instalments, where instalments continued to fall due, and remained unpaid, after the close of the protected period, each such instalment constituting a fresh and independent default. There is no comparable fresh default here. The entire operational debt fell due within the protected period of 25.03.2020 to 24.03.2021 on the invoices raised in the year 2020, all within the protected period; the only event relied upon thereafter is the dishonour of a cheque issued towards part payment of that very debt, which, as already held, does not give rise to a fresh default. The Operational Creditor cannot, by pointing to the dishonour of such a cheque, convert a default that occurred within the Section 10A period into one occurring outside it.

v. This view is reinforced by the conduct of the Operational Creditor itself. In its earlier demand notice under Section 8 dated 22.04.2022, the Operational Creditor stated that the default commenced on 17.11.2020, being the due date of the first invoice dated 18.09.2020, with further defaults on the due dates of the pending invoices. Having placed the default in the year 2020 in its own statutory notice, it cannot now assert 16.04.2021 as the date of default in order to bring the claim outside Section 10A. A creditor cannot, by issuing one notice after another, alter the date on which the default in fact occurred.

vi. The scope of Section 10A stands settled by the decision of the Hon'ble Supreme Court in ***Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd., (2021) 3 SCC 224***. It was held that the provision imposes a bar on the initiation of the resolution process in respect of any default occurring on or after 25.03.2020, and that the proviso, in declaring that no application shall ever be filed for such a default, makes that bar absolute and independent of the date on which the application happens to be filed. The default in the present case having occurred in the year 2020, within the protected period, no application in respect of it can be entertained, and the proviso forecloses it for all time.

On this ground alone the petition is liable to be rejected.

Issue (i) is answered accordingly.

Issue (ii): Pre-existing dispute and record of dispute

i. The facts material to this issue are as follows. The supplies were made against the work order dated 31.03.2020, placed on a back-to-back basis under the Corporate Debtor's rate contract with the Madhya Pradesh Public Health Services Corporation Limited (MPPHSCL) under Tender No. 152. By letter dated 09.03.2021 addressed to the Operational Creditor — more than two and a half years before the demand notice — the Corporate Debtor raised specific grievances as to the amounts charged: that the price had departed from the MPPHSCL rate contract (NIT-152); that a medical cess of 6.16% had been added contrary to the term that only Goods and Services Tax was payable; and that transportation had been charged in excess of the agreed term. The demand notice under Section 8 founding this petition was issued much later, on 25.10.2023, and was delivered on 30.10.2023; the Corporate Debtor replied on 03.11.2023, reiterating the same grievances. The Record of Default filed by the Operational Creditor with the information utility (NeSL) records the status of the debt as "disputed".

ii. The law is well settled. Section 5(6) of the Code defines a "dispute" to include a dispute relating to the existence or the amount of the debt, or the quality of goods or services. Section 9(5)(ii)(d) requires this Authority to reject a Section 9 application where a notice of dispute has been received by the operational creditor, or a record of dispute exists in the information utility. In **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353**, *It was held that, at the stage of admission, the Authority is only to satisfy itself that the dispute raised is a plausible one requiring investigation and is not spurious, hypothetical or illusory; it is not to enquire whether the dispute will ultimately succeed.*

iii. Applying that test to the facts stated above, we are satisfied that a genuine dispute existed between the parties well before the demand notice. The grievances were raised by the letter of 09.03.2021 — more than two and a half years before the demand notice of 25.10.2023 — and are borne out by the contemporaneous forfeiture of the bank guarantee on 11.12.2020. They go to the price, the cess and the freight that together make up the very amounts invoiced, and therefore to the existence and quantum of the debt in respect of which this petition is brought. Such a dispute is plainly not a moonshine got up to resist admission; it is documented and contemporaneous, and long predates the notice. The Operational Creditor's reliance on the acknowledgement of delivery recorded on the transporter's receipts does not meet the point, for the dispute is not about whether the goods were delivered but about the price charged and the manner of performance.

iv. Independently of the pre-existing dispute, the bar in Section 9(5)(ii)(d) is attracted on both its limbs. The Corporate Debtor's reply dated 03.11.2023 is a notice of dispute received by the Operational Creditor; and the very Record of Default on which the Operational Creditor relies for its asserted date of default is itself authenticated in the information utility as "disputed". Either circumstance is by itself sufficient to attract the provision; here both are present.

v. This conclusion is supported by the recent decision of the Hon'ble National Company Law Appellate Tribunal in **Salil Musale v. Lintec India Pvt. Ltd. & Ors. [Company Appeal (AT) (Insolvency) No. 870 of 2026,** decided on 25.05.2026], *where, on comparable facts — a notice of dispute issued within ten days of the demand notice, coupled with a NeSL record marked "disputed" — the admission of a Section 9 petition was set aside, it being held that a disputed marking supported by material cannot be dismissed as moonshine.* The decisions relied upon by the Operational Creditor (Deepak Modi v. Shalfeyo Industries Pvt. Ltd. and Rajendra Bhai Panchal v. Jay Manak Steels Ltd.) are distinguishable, for in each the dispute was raised for the first time in reply to the demand notice and was unsupported by any earlier material, whereas here the dispute stands recorded in the letter of 09.03.2021 and is corroborated by the guarantee forfeiture of 11.12.2020.

vi. For these reasons, a dispute within the meaning of Section 5(6) existed between the parties before the demand notice, a notice of dispute was received by the Operational Creditor, and a record of dispute subsists in the information utility. The consequence prescribed by Section 9(5)(ii)(d) is not a matter of discretion: the application must be rejected. the petition fails on this ground also, independently of Section 10A.

Issue (ii) is accordingly answered.

23. The defaults claimed having occurred during the period protected under Section 10A of the Code, the default cannot be taken to be a cause of action in the eye of law. The question of the petition being within or beyond limitation is, therefore, out of question.

ORDER

24. In view of the above observation and analysis, the petition is barred by Section 10A of the Code, and is in any event met by a pre-existing dispute attracting Section 9(5)(ii)(d) of the Code. The petition does not merit admission. It is accordingly ordered as follows:

(i) Company Petition **CP(IB) No. 24 of 2024**, filed by the Operational Creditor under Section 9 of the Code read with Rule 6 of the Adjudicating Authority Rules for initiating the

Corporate Insolvency Resolution Process against the Respondent, is **dismissed & Disposed of.**

(ii) The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

Sd/- Sd/-

MAN MOHAN GUPTA **BRAJENDRA MANI TRIPATHI**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

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