



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

**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**  
*(Through Physical Hearing/VC Mode (Hybrid))*

**CP (IB) No.105/BB/2023**  
**U/s. 9 of the IBC, 2016**

**R/w Rule 6 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**ARISUNITERN RE SOLUTIONS PVT LTD**

10<sup>TH</sup> Floor, 137/34, HMG Ambassador,  
Residency Road, Bangalore 560025

... Operational Creditor

**Versus**

**GULAM MUSTAFA ENTERPRISES PVT LTD**

G.M Pearl, No 06, BTM Layout,  
1<sup>st</sup> stage, 1<sup>st</sup> Phase, Bengaluru - 560068

... Corporate Debtor

**Order delivered on: 29/02/2024**

**Coram:**

Hon'ble Shri. K. Biswal, Member (Judicial)

Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner	: Shri A.Murali with Shri Vishakh Nag, Adv
For the Respondent	: Shri C.K.Nandakumar, Sr.Adv. with Ms. Natasha N. Murthy, Adv.

**O R D E R**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition is filed on 25/05/2023 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, by **Arisunitern re Solutions Private Limited** (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Professional Process against **Gulam Mustafa**



**Enterprises Private Limited** (hereinafter referred as 'Corporate Debtor'/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 7,11,24,796/- along with interest. The date of default mentioned in the Part IV of Form 5 is 01/04/2022, which is also there in the Record of Default in Form D issued by NESL. Affidavit U/s 9(3) (b) was placed at page 17 of CP, while Demand Notice under Section 8(1) was attached at Page 1103 onwards.

2. Brief facts of the case, as narrated by the Petitioner are as follows:

- i. The Corporate Debtor (CD) engaged in real estate business. In December 2021, the CD approached Arisunitern Re Solutions Private limited, the Operational Creditor (OC) for supply of steel and other real estate products and services.
- ii. For the purpose of acquiring the goods and materials from the OC, the CD issued a purchase order dated 25/01/2022. Against the purchase order and the requests placed by the corporate debtor, the OC continuously made supplies of the said materials and services to the CD.
- iii. Towards the aforementioned supplies made by the OC, invoices were raised by the OC with a credit period of 60 days from the date of invoice and the same were delivered to the CD. The CD has also acknowledged the receipt of the invoices. Thereafter, for supplies made from August 2022, the parties agreed that the credit period would be reduced from 60 days to 1 day from the date of invoice.
- iv. Upon completion of the credit period, the OC has issued several communications and reminders to the CD requesting them to make payment towards the outstanding invoices. The CD assured the OC that it will honor the payment towards the invoices and placed additional orders with a promise to pay the entire sum due and payable along with interest to the OC.
- v. The OC continued to make supplies to the CD but, no payment was made by the CD to the OC. The OC again issued several reminders requesting for payment due and payable to the OC towards supply of the said materials and services.



- vi. Invoices from January 2022 aggregating to a sum of Rs. 6,18,58,214/- as principal and Rs. 92,66,582/- as interest at 18% is due and payable as at May 2023. The total debt due and payable by the Corporate Debtor to the Operational Creditor is a sum of Rs 7,11,24,796/-.
  - vii. Despite several reminders issued by the OC, the CD did not come forward to make any payment. Thereafter, the OC issued a demand notice dated 12/04/2023 to the CD under section 8 of the IBC, 2016 to which the CD has not issued any reply.
3. The notice in the present case was issued on 19/07/2023. On 03/11/2023, the CD/Respondent filed its statement of objection, vide Diary No: 5592 and contended as under:
- i. It is submitted that the goods/materials supplied by the Operational Creditor were subpar and failed to meet the quality standards expected for the construction project i.e, the sample approved by the Corporate Debtor before issuing Purchase orders. As a result, the Corporate Debtor was unable to undertake effective construction within the stipulated time frame, which subsequently led to substantial financial losses.
  - ii. It is also submitted that since the CD is in continuous dispute regarding the quality and time line issues of the good and materials supplied that the issue of payment towards the invoices does not rise. Even after repeated alarms raised by the CD, the OC did not heed to the requests of the CD.
  - iii. It is submitted that if any contractual dispute between the parties arises during the contractual period, provisions are made in the contract for resolution of such disputes. The disputes between the parties are not supposed to be decided, examined and adjudicated under IBC proceedings. Therefore the Petition filed by the Operational Creditor is not maintainable under IBC and has to be dismissed.
  - iv. The alleged operational debt claimed herein is not an undisputed or admitted liability, and hence this petition ought not to be admitted.



- v. It is submitted that the Operational Creditor did not comply with Section 8 of IBC, they have not submitted a single invoice along with the Demand Notice, therefore the Petition filed by the Operational Creditor is not maintainable under IBC
- vi. Moreover, the Corporate Debtor is a solvent company and they have invested huge amounts in the project.

4. The Learned Counsel for the Petitioner filed the rejoinder vide Diary No: 6117 dated 06/12/2023, Citations vide Diary No 575, dated 29/01/2024, and written submissions Diary No 819 dated 06/02/2024, It is stated that the CD never issued any notice or complaint or any communication to the effect that the quality of material supplied by the OC was substandard. Further that the CD has not submitted any documents to show that there was a pre-existing dispute. The amount due to the OC was Rs 6,18,58,214/- towards unpaid invoices of the materials delivered to the CD. Moreover, it is submitted by the Petitioner that there is an acknowledgement given by the CD vide letter dated 08/08/2022 in which they have confirmed that the outstanding amount as on 30/06/2022 towards the OC was Rs 4,66,28,800/- and the same will amount to the admission of the debt. This document is filed as per Annexure L, page 11 with the rejoinder.

Further, in the written submissions, the petitioners have relied on the decisions of Hon'ble Supreme Court in *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, [AIR 2017 SC 4532], Dated 21/09/2019, the orders of Hon'ble NCLAT in the matters of *Ashok Kumar Bhasin Vs. ABB Power Products and Systems India Ltd* [(2023) ibclaw.in 313 NCLAT], dated 11/05/2023 and *Writers and Publishers Pvt. Ltd. Vs. M/s Oriental Coal Corporation* [(2022 ibclaw.in 1040 NCLAT] dated 15/12/2022.

- 5. We have pursued the records available and also heard the Learned Counsels based on which we observe the following:
- 6. The Present Petition was filed on 25/05/2023 under section 9 of the Insolvency and Bankruptcy Code, 2016 by M/s Arisunitern re Solutions Private Limited, *inter alia* seeking to initiate Corporate Insolvency Resolution Process against Gulam Mustafa Enterprises Private Limited on



the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 7,11,24,796/-. As already discussed above, the CD has already acknowledged an amount of Rs 4,66,28,800/- as outstanding debt by its letter dated 08/08/2022. Therefore the threshold requirement of Rs. 1 Crore at the time of filing of Petition is fulfilled. This Tribunal has perused the invoices, record of default Form 'D' and the statement of accounts which has been attached along with the petition and the debt is established in this regard.

7. The Petitioner has attached the copy of Demand Notice dated 12/04/2023 which was served but no reply to the Demand Notice was received. In this regard the CD raised the objections that the invoices were not served with the Demand Notice as per Section 8 of IBC. In this connection, it is stated that in accordance with Section 8 as well as Section 9(3) (a) of the IBC, 2016; the requirement is to serve on the Corporate Debtor either the Demand Notice in Form No. 3 or copy of invoice with Form.4 before filing of this Petition. The CD has confirmed to having received the Demand Notice. Hence the requirement of Section 8 and 9 of IBC is fulfilled. The Petitioner has also filed affidavit under section 9(3)(b) of IBC dated 22.05.2023 affirming that that no notice of dispute with regard to the unpaid operational debt has been given by the Corporate Debtor. In this regard the CD stated that there is a pre-existing dispute between the parties, but failed to produce any documentary proof in support of its arguments. In the Written Submissions filed on 06/02/2024 by the Petitioner, in which reference was also made to certain judgements of Hon'ble NCLAT cited supra, the Petitioner has addressed the issue of substandard quality of supply of goods. It is contented by the Petitioner that these were vague and unsubstantiated defense without furnishing any documents to corroborate the same. It is further noticed that the Petitioner has filed the copy of the decision of the *Hon'ble NCLAT, Principal Bench, New Delhi* in the case of *Writers and Publishers Private Limited v.s M/s. Oriental Coal Corporate and another in Company Appeal (AT) (Insolvency) No.1170 of 2022 passed on 15.12.2022*. In that case also the contention was raised by the Respondent that there was a pre-existing dispute, in so far as there was inferior quality of coal supply. However, this dispute was



not raised prior to the issue of Demand Notice under Section 8 (1) of the IBC. No documents were furnished to the Operational Creditor regarding the Coal quality assessment report as mentioned in the order, whereas, the same was placed on record during the appeal filed before the NCLAT. On the basis of these facts, the Hon'ble NCLAT rejected the appeal stating that there was no pre-existing dispute in the case, since the matter of supply of low quality of goods were not raised with the Operational Creditor prior to the issue of the Demand Notice under Section 8 (1) of the IBC 2016. In this case also, the facts are same, in the sense that there are no documents brought on record to show that the goods having been supplied by the Operational Creditor were of substandard quality and such an issue was not raised by the Corporate Debtor prior to the issue of demand notice under section 8 (1) of the IBC. Accordingly, the claim of there being a pre-existing dispute in the case is not tenable.

8. The Petition has been filed on 25/05/2023, hence the Petition is well within the limitation, considering the date of Default as 01/04/2022, mentioned in Form No. 5
9. Accordingly, this Adjudicating Authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against the Gulam Mustafa Enterprises Pvt Ltd of the Corporate Debtor. Therefore, the instant Company Petition bearing **CP (IB) No. 105/BB/2023 is admitted** against the Corporate Debtor Gulam Mustafa Enterprises Private Limited and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14 of the Code, the following prohibitions are imposed, which must be followed by all and sundry:
  - a. the institution of suits or continuation of pending suits or proceedings against the Project of Corporate Debtor including execution of any judgment, decree or order in
  - b. any court of law, tribunal, arbitration panel or other authority;
  - c. transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;



- d. 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;
- e. the recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- f. 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;
- g. the provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- h. the order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

10. This bench appoints Mr. Balakrishnan Venkatachalam Registration No. IBBI/IPA-001/IP-P00229/2017-2018/10458, having registered address: 4C-420, 3<sup>rd</sup> Floor, Kempe Gowda Underpass Road, (5<sup>th</sup> Main), Ramamurthy Nagar, Bangalore, Karnataka, 590016, Contact No: 8095768000, e-mail: *cabalakrishnanip@gmail.com* as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15,17,18,19,20,21 of the IBC.
11. 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.



- 12.** The Interim Resolution Professional shall after collation of all the claims received against Gulam Mustafa Enterprises Pvt Ltd of 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 Tribunal 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 Tribunal every fortnight.
- 13.** A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

-Sd-

**(K.BISWAL)**  
**MEMBER (JUDICIAL)**