



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing)

CP (IB) No.59/BB/2022

U/s. 9 of the Insolvency and Bankruptcy Code, 2016
R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016

IN THE MATTER OF:

M/s Brahma Steels,

Registered Office at:
Sy No. 128/18, Mandoor Village,
Budigere Main Cross, Devanahalli Main Road,
Bengaluru 560 049.

... Petitioner/Operational Creditor

Versus

M/s Ambient Controls Private Limited,

Registered Office at:
No.81, Charles Camp bell road,
Coxtown, Bengaluru.

... Respondent/Corporate Debtor

Order delivered on: 15th February, 2024

Coram:

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

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

PRESENT:

For the Petitioner : Shri Vedhavel


For the Respondent : Shri Gautham Nettar

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)


1. The present petition is filed on 18.11.2021 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules

CP (IB) No. 59/BB/2022



2016, by M/s Brahmis Steel Private Limited (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. Ambient Controls 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 Debt of Rs. 3,27,96,405/- (Rupees Three Crore Twenty Seven Lakh Ninety Six Thousand Four Hundred and Five Only), as per Part IV of Form No.5 filed with the petition.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
 - a. The petitioner M/s Brahmis Steel is partnership firm registered under MSME Act and are engaged in the business of trading branded steel which is used for various construction activities.
 - b. The Respondent herein is a private limited company registered under Companies Act, 1956 and is into the business of construction of industrial sheds.
 - c. The Petitioner has been a regular supplier of steel which is required by the Respondent/Corporate Debtor to construct Industrial Shed. Further, the business between the parties started in 2014, when the Respondent/Corporate Debtor purchased the materials for the first time on 16.11.2015.
 - d. However, during the period starting from 08.04.2017 to 19.03.2018 thirteen (13) invoices become overdue. Further the petitioner demanded for the due amount several times through various modes of communication i.e mail, phone calls, WhatsApp Messages and Letters. Moreover, when the concerns was raised by the Petitioner, the respondent committed to fulfil his obligations.
 - e. Further, the petitioner issued Demand Notice under section 8 of IBC, 2016. The First notice was sent on 23.07.2021, where in the respondent through their reply letter dated 07.08.2021 conveniently commented only for part of the transaction and part



of the payment. Subsequently the Operational Creditor issued a second notice on 19.08.2021 seeking explanations on all the outstanding invoices including all the opening balances. The respondent however failed to reply within the relevant time frame ending on 29.07.2021.

- f. However, on 18.09.2021, the respondent sent a notice disputing the Quality of Service and Quantity of Materials supplied by the Petitioner. It is submitted that the reply had reached the petitioner 20 days after the expiry of time over a period of 6 years and after issuing two demand notices under Section 8 of IBC, 2016, a dispute regarding quality and quantity were made.
 - g. It is submitted that despite several opportunities given to the Respondent to pay the due amount, the Respondent failed to pay the admitted dues, hence the petitioner has filed this instant Application.
3. The Learned Counsel for the respondent filed its statement of objection vide diary no. 4055 on 26.09.2022 contenting the following:
- a. It is submitted that, as per the claim made by the Petitioner the alleged amount due is for the period between 08.04.2017 to 19.03.2018, however, the above petition was filed on November, 2021, therefore barred by limitation.
 - b. Further, it is contented that, in numerous invoices raised by the petitioner did not have test certificate nor did not meet the requisite yield strength i.e., the steel of requisite standard and grade was not supplied.. And the said concern has been raised by the respondent to the petitioner in reply to the demand notice.
4. Rebutting the contention raised by the respondent, the petitioner submits that the as per the provisions of Limitation Act as concern, petition is well within the time limit as per Hon'ble Supreme Court order dated 10.01.2022 for Miscellaneous Application 21 of 2022 in Miscellaneous Application No. 665 of 2021, in Suo Moto Writ Petition (c) No. 3 of 2020. Further, regarding the quality of material

supplied, it is submitted that the respondent had received the material and used in further sales and made revenue out of that, as a duty of them not raised the quality dispute even a single time from the beginning to till filing the application before this Tribunal.

5. On 01.02.2023, this Tribunal directed the Petitioner to file submission as on how the limitation is satisfied and the compliance to the above directed was made submitting that invoice amount due against the transactions between 08.04.2017 to 19.03.2018 was rupees 1,59,26,825/- and interest of Rupees 16,86,180/- totally coming to Rupees 3,27,96,405/-. Further on 19.11.2019 the respondent approach the petitioner to re-start the supply of materials and requested the time to repay the old dues. Moreover to the demand notice dated 19.08.2021, the respondent accepted the debt vide their response to demand notice dated 10.09.2021 raised dispute regarding the quality of materials supplied, which they did not raise previously or at the time of follow up for due amount. Further, the debt is accepted through whatapp communication between one of the Director of corporate debtor and partner of operational creditor respectively.
6. Vide order 01.11.2023 this Tribunal noted that,
 - (i) *“Regarding the Limitation, the Ld. Counsel for the Petitioner states that date of default was on 08.04.2017 and the due date for limitation was failing in the period for which the Hon’ble Supreme Court in Suo Moto Writ Petition (Civil) No.3 of 2020 has extended the period of limitation and since it was filed on 18.11.2021, the limitation aspect is taken care of.”*
 - (ii) *It is pointed out by the Ld. Counsel for the respondent that along with the CP, the Petitioner has filed two different statutory notices issued under Section 8 of IBC, the first one is at Page No. 102 of the CP, issued on 23.07.2021 showing an outstanding debt of Rs. 1,69,52,601.31/-. However, Annexure -1 of the same shows that for all the invoices which have been mentioned therein, the date of default falls under the period*

covered in Section 10A of IBC. Further, it is pointed out that the opening balance as per this account as on 01.04.2020 is zero, reflecting that all the earlier amounts have been paid. Further, on 19.08.2021 they have issued another demand notice u/s 8, which is annexed at Page No. 139 of the C.P, which shows an outstanding debt of Rs. 3,27,96,405/- which is the amount mentioned in Part-IV also. This list of invoices shows that all the invoices pertain to the period 08.04.2017 to 19.03.2018; which is in contradiction to the statement at Page No. 106 of the C.P., which mentioned the opening Balance of due amount as on 01.04.2020 as nil .

(iii) *Ld. Counsel for the petitioner is given an opportunity to file a memo explaining the issuance of two different Demand Notice and two different set of invoices, including the explanation on the above discrepancy.”*


7. However, in the Short Note filed vide Dy. No.5903 dated 22.11.2023 in compliance to the above directions, the Petitioner has not given any explanation regarding the basis and justification for issuing two demand notices under Section 8 of the IBC on two different dates, enclosing two different sets of Invoices. It only contains a list of certain documents relied upon for determining the date of default and an index related to various documents, invoices and affidavit under Section 9 (3) (b) etc., submitted with the C.P.
8. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.
9. The present petition is filed under section 9 of the IBC by M/s Brahmis Steel against M/s Ambient Controls Private Limited for initiation of CIRP interalia claiming that there was a debt and default for the outstanding amount of Rs. 3,27,96,405/-.
10. The main contention raised by the respondent is that the matter is barred by limitation as the date of default falls on 08.04.2017. However, it is observed by this Tribunal that the Hon'ble Supreme Court vide order dated 10.01.2022 in the Suo Moto Writ Petition

(Civil) No. 3 of 2020 has excluded the period of 15.03.2020 to 28.02.2022 for the purpose of limitation; as specified in this order. Moreover, the petitioner has also attached various acknowledgment dated 11.01.2019, 27.10.2019 and 09.09.2020 of the Corporate Debtor admitting the liability each of which also enables extension of limitation. Since, the present petition is filed on 18.11.2021 it is well within the limitation.

11. During the course of the proceedings before this Adjudicating Authority, it was pointed out by the Counsel for the Respondent that the Petitioner had issued two different demand notices under Section 8 of the IBC. The first demand notice dated 23.07.2021 in Form No.3 is enclosed at Page-102 of the C.P (Annexure-2) which is for an outstanding debt of Rs.1,69,52,601/-; the details of the corresponding invoices/ transactions was attached as Annexure-1 (Page-106) of the C.P and the same is being reproduced here for the sake of reference:


Invoice No	Date of Delivery	Date of Due	24% Amount	Amount collected	Total due	No of days delayed	Interest amount @24%	Total Amount Due
opening Bal	01-04-2020	01-05-2020	15136298.00	15136298	0.00	0.00	0.00	-
	01-Apr-20	01-05-2020	3806892.00	3806892.00	0.00	401.00	-	-
032/2020-21	15-May-20	14-Jun-20	1640448.00	1640448.00	0.00	402.00	-	-
037/2020-21	16-May-20	15-Jun-20	1675748.00	1675748.00	0.00	398.00	-	-
045/2020-21	20-May-20	19-Jun-20	1111870.00	1111870.00	0.00	428.00	3,57,620	16,05,602.03
054/2020-21	21-May-20	20-May-20	1919069.00	666087.00	1252982.00	395.00	98,036	4,75,493.67
063/2020-21	23-May-20	22-Jun-20	377458.00	377458.00	0.00	369.00	3,74,246	19,16,701.07
165/2020-21	19-Jun-20	18-Jul-20	1542455.00	1542455.00	0.00	366.00	3,89,780	20,09,423.53
175/2020-21	22-Jun-20	21-Jul-20	1619644.00	1619644.00	0.00	364.00	3,45,978	17,91,512.91
181/2020-21	24-Jun-20	23-Jul-20	1445535.00	1445535.00	0.00	359.00	4,03,399	21,12,322.47
201/2020-21	29-Jun-20	28-Jul-20	1708923.00	1708923.00	0.00	354.00	3,59,531	19,04,127.17
211/2020-21	3-Jul-20	2-Aug-20	1544596.00	1544596.00	0.00	351.00	3,54,059	18,88,145.87
223/2020-21	6-Jul-20	5-Aug-20	1534087.00	1534087.00	0.00	344.00	1,90,237	10,31,281.24
250/2020-21	13-Jul-20	12-Aug-20	841044.00	841044.00	0.00	299.00	90,604	5,51,453.18
422/2020-21	27-Aug-20	26-Sep-20	460849.00	460849.00	0.00	285.00	2,63,016	16,66,538.18
512/2020-21	11-Sep-20	10-Oct-20	1403522.00	1403522.00	0.00	92.00	-	-
558/2020-21	23-Sep-20	22-Oct-21	2057970.00	-	-	-	-	-
								1,69,52,601.31

12. The Learned Counsel for the Respondent pointed out that as per this Annexure-1 of the Demand Notice dated 23.07.2021 which gives details of the invoices amount clearly shows that the opening balance as on 01.04.2020 was zero, showing that all the earlier due amounts were already paid. Further, all the invoices mentioned in this Annexure-1 which were not fully paid starting from Invoice No.054/2020-21 upto Invoice No.512/2020-21 are during the




period covered under Section 10A of the IBC 2016 i.e., both the date of the invoices and the due dates which is one month after the date of invoices, fell during the exclusion period under Section 10A of the IBC.

13. The second Demand notice under Section 8 of the IBC was issued on 19.08.2021 which is annexed at Page 139 of the C.P showing an outstanding amount of Rs.3,27,96,405/-; and the corresponding invoices enclosed as Annexure-1 (Page 141) to this demand notice show that there was an outstanding Principal amount for the unpaid invoices of Rs. 1,68,69,580/-; to which interest of Rs.1,59,26,825/- was added to arrive to this figure of outstanding amount of Rs.3,27,96,405/-. However, in this Annexure-1, the invoices for the outstanding amount pertain to the period between period 08.04.2017 to 19.03.2018. This was in total contradiction to the statement of outstanding invoices given with the first Demand Notice dated 23.07.2021 at Page 106 of the C.P which clearly mentions that the opening balance of the outstanding due amount as on 01.04.2020 was Nil. This discrepancy was clearly pointed out vide order dated 01.11.2023 of this Tribunal as reproduced above and the Learned Counsel for Petitioner was asked to furnish explanation on this discrepancy. However, no explanation whatsoever was furnished by the Petitioner.
14. Moreover, all the invoices for which amounts are shown outstanding as per Annexure-1 of the first demand notice dated 23.07.2021 are clearly falling under exclusion period under Section 10A of the IBC. A further analysis of this Annexure-1 clearly showed that as against opening balance as on 01.04.2020 of Rs.1,51,36,298/-, the entire amount has already been paid by the Respondent and the balance outstanding due amount was accordingly shown as zero. Further, there was an invoice dated 01.04.2020, for an amount of Rs.38,06,892/- with the due date being 01.05.2020, which falls under the period covered under Section 10A of IBC. However, the amount pertaining to this invoice was already collected and the



balance due against this amount was also shown as zero. Similarly, for Invoices No.32/2020-21, 37/2020-21 and 45/2020-21; (Annexure -2) (all these three invoices were also falling under the period covered under Section 10A of the IBC) also the full amount was already paid, so that nothing was left outstanding for these invoices. Therefore, on the analysis of this list of invoices given in Annexure-1 clearly establishes the fact that there was no outstanding amount payable to the Petitioner for the earlier period as on 01.04.2020; and all the subsequent invoices in this list fell in the period specified under Section 10A of IBC.

15. Therefore, if the Petitioner has filed the copy of the another Demand Notice under Section 8 of the IBC in Form No.3 on 19.08.2021 in which a similar list of outstanding invoices were annexed as another Annexure-1 (Page 141 of the C.P); showing an outstanding principal amount of Rs.1,67,69,580/- with the dates of invoices between 08.04.2017 to 19.03.2018, the same is not acceptable since nothing was left outstanding as on 01.04.2020 as per Annexure-1 (Page-106) of the Demand notice dated 23.07.2021. Therefore, there was no outstanding amount remaining to be paid for this period from 08.04.2017 to 19.03.2018, since the opening balance of the outstanding amount payable was Nil as on 01.04.2020.
16. Therefore, this Tribunal granted a specific opportunity to the Petitioner to explain the above discrepancy with proper reasoning vide order dated 01.11.2023. However, the Petitioner has failed to do so. Moreover, the Petitioner also failed to give justification and basis of issuing two different demand notices under Section 8 of the IBC in Form No.3, on two different dates, enclosing the list of two different sets of invoices. Hence, it has been conclusively established above that no outstanding debt was pending as on 01.04.2020. Also, all the invoices which were mentioned in the Annexure-1 of first demand notice as discussed above fell under the excluded period provided under Section 10A of the IBC, being dated 21.05.2020 to 23.09.2020, with the due date being 30 days after the date of



invoices. As per Section 10A of IBC, no proceedings under Section 7, 9 or 10 can be initiated for any default occurring during the period specified under this Section. Accordingly, it is held that the Petitioner has failed to establish the existence of the debt and default as provided under Section 9 of the IBC, and the invoices remaining outstanding as per Annexure-1 to notice dated 23.07.2021 were all for default occurred during suspended period under Section 10A of IBC. Hence, it is concluded that this petition is not a fit case for admission.

17. Therefore, **CP. (IB) No. 59 of 2022** is hereby **dismissed**.

-Sd-

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

-Sd-

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