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**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL  
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**

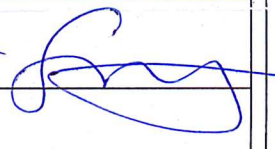
**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.09.2019 AT 10.30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.623/9/HDB/2018
NAME OF THE COMPANY	Basai Steels & Power Pvt Ltd
NAME OF THE PETITIONER(S)	Enmas O & M Service Pvt Ltd
NAME OF THE RESPONDENT(S)	Basai Steels & Power Pvt Ltd
UNDER SECTION	9 of IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Souvik Roychowdhury	Adv		

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Nareesh Kumar Sangam	Adv	9000666072	

**ORDER**


Orders passed vide separate orders.

Petition is rejected.



**Member (T)**

**Pavani**



**Member (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

CP (IB) No. 623/9/HDB/2018

U/s 9 of IBC, 2016

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

**IN THE MATTER OF M/S.BASAI STEELS AND POWER PRIVATE  
LIMITED**

M/s. Enmas O & M Services Private Limited,

**REGISTERED OFFICE:**

“EOM Square” SP 107, Ambattur Industrial Estate (South),  
Ambattur, Chennai- 600058.

... Petitioner/Operational Creditor

**VERSUS**

M/s. Basai Steels and Power Private Limited,

**REGISTERED OFFICE:**

A-23/5&6, APIE, Balanagar,  
Hyderabad, Telangana- 500037.

... Respondent/ Corporate Debtor

**Date of order 03.09.2019**

**Coram:**

**Hon'ble Shri RatakondaMurali, Member (Judicial)**

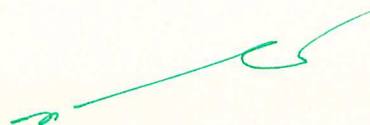
**Hon'ble Shri Narendra Kumar Bhola, Member (Technical)**

**Parties / counsels present:**

For the Petitioner: C.Sangamithirai, Advocate.

For the Respondent: Naresh Kumar Sangam, Advocate.

Heardon: 05.07.2019, 31.07.2019, 19.08.2019.



**Per: Hon'ble Shri Ratakonda Murali, Member (Judicial).**

**ORDER**

1. This petition is filed by M/s.Enmas O & M Services Private Limited who is the Operational Creditor, stating that M/s. Basai Steels and Power Private Limited, the Corporate Debtor had defaulted in repaying a sum of Rs.35,79,290/-. Hence this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
2. The brief averments made in the petition are as follows:
  - a) It is averred that the Operational Creditor provided operation and maintenance services to the Corporate Debtor as per the Agreement dated 1<sup>st</sup> February, 2011.The Operational Creditor agreed to operate the power plant and deputed technical man power at the plant of the Corporate Debtor on monthly payment basis.
  - b) It is averred that the Operational Creditor raised invoices on Corporate Debtor and the Corporate Debtor liable to pay a sum of Rs. 35,79,290/- to the Operational Creditor under the invoices. The Details of invoices are as follows:

Invoice Date	Invoice Amount (Rs.)	Invoice Number
31.12.2011	1339594	248
31.01.2012	1412502	272
01.03.2012	1495999	296
31.03.2012	1031195	325

- c) The Operational Creditor issued Demand Notice in FORM-4 to the Corporate Debtor on 12.03.2018. The Corporate Debtor chooses not to reply
- d) It is averred that the Corporate Debtor after using the services of the Operational Creditor failed to pay a sum of Rs. 35,79,290/- .


3. The brief averments made in the counter are as follows:

- a) It is averred that this tribunal vide order dated 19.07.2017 in CP (IB) No. 77/9/HDB/2017 has admitted the Application filed by Operational Creditor i.e M/s. Bharat Steels Industries and initiated the Corporate Insolvency Resolution Process against the very same Corporate Debtor.
- b) It is averred that this tribunal vide order dated 13.04.2018 in CA. No.85 of 2018 IN CP (IB) No. 77/9/HDB/2017 approved the Resolution Plan submitted by the Resolution Applicant M/s.Prem Enterprises.
- c) It is averred that as per Section 31(1) of I&B Code, 2016 the Resolution Plan once approved by this tribunal is binding on the Corporate Debtor and its employees, members, creditors, guarantors, and other stakeholders involved in the Resolution Plan.
- d) It is averred that Resolution Plan specifically provides that the creditors who failed to submit their claims in accordance with I &B Code, 2016 shall not have any claim against the Corporate Debtor.
- e) It is averred that as per Regulation 12 of IBBI(Insolvency Resolution Process for Corporate Debtor Persons) Regulations, 2016 the Operational Creditor has to file claim before the IRP/RP . The Operational Creditor to file any claim before IRP/RP during CIRP Process of the Corporate Debtor.
- f) It is averred that the Operational Creditor barred from making any claim against the Corporate Debtor for the debts arised

before the approval of the Resolution Plan. The Claims made by the Operational Creditor in the Application is for period 30.11.2011 to 31.03.2012 i.e before Commencement of Corporate Insolvency Resolution Process of the Corporate Debtor. Hence Application is liable to be rejected.


4. We have heard the Counsel for Operational Creditor and Counsel for Corporate Debtor. The contention of the Learned Counsel for Operational Creditor that Corporate Debtor entered into Maintenance Agreement with the Operational Creditor for providing services of Operations and maintenance of 10 MW Power plant of M/s Basai Steels and Power Private Limited (Corporate Debtor). The Agreement dated 01.02.2011 where under the Operational Creditor agreed to operate the power plant and depute technical manpower for smooth operations of the Plant and raised monthly bills.
5. The Learned Counsel contended that the Corporate Debtor made part payment under the invoices raised for the months of December 2011, January, 2012, February, 2012 and March 2012. The total amount covered by invoices is Rs. 52,79,290/- and the total amount received from the Corporate Debtor was only Rs. 17,00,000/- and balance payable is Rs. 35,79,290/-. The Learned Counsel for Operational Creditor contended that a demand notice was issued to the Corporate Debtor which is at page Nos 18-22 of the paper booklet. Counsel contended that Corporate Debtor committed default of the operational debt and therefore Petition is liable to be admitted. Counsel further contended that there is a dispute raised by the Corporate Debtor and hence Petition is liable to be admitted.
6. Per Contra Counsel appearing for Corporate Debtor would contend that earlier M/s Bharat Steels Industries filed petition against the Corporate Debtor herein under Section 9 of Insolvency & Bankruptcy Code, 2016 bearing CP (IB) No. 77/9/HDB/2017 to initiate CIRP against Corporate Debtor and that the said petition was admitted by this Tribunal on 19.07.2017. Order of this Tribunal is shown as Annexure-I. The Counsel contended that IRP


appointed made publication inviting creditors to submit their claims on or before 16.08.2017. The Learned Counsel contended that under Regulation 12(1) of IBBI (Insolvency Resolution for Corporate Persons) Regulations 2016, every creditor has to submit claim with proof before IRP/RP within the date announced in the publication. Counsel further stated that if any creditor failed to submit the claim within the time prescribed in the public announcement, the creditor can submit claim as per the then provisions of Regulation 12 (2) of IBBI (IRPCP) Regulations, 2016 before accepting the Resolution Plan. The Learned Counsel stated that CIRP was extended by 90 days which came to an end by 15.04.2018. The Resolution Plan was submitted on 03.04.2018 which was also approved by the CoC. The Resolution Plan was approved by this Tribunal and as such resolution plan is binding on all the stakeholders including the Petitioner. The Resolution Plan provides that creditors who have not submitted the claims have no right to proceed against the Corporate Debtor after approval of the Plan. Thus, Learned Counsel contended that Operational Creditor cannot initiate action against Corporate Debtor which was already undergone CIRP.

7. The Learned Counsel further contended that the claim is barred by limitation. The claim relates to the period from December 2011, January, 2012, February, 2012 to March 2012. Thus, the claim is barred by limitation. The counsel contended that provisions of Limitation Act would apply to the claim involved in the petition filed under IBC by virtue of Section 238A of IBC.
  8. It is undisputed fact that Corporate Debtor had undergone CIRP. The Petitioner had not made any claim before the IRP/RP at any time prior to the approval of Resolution Plan. The Petitioner has not used the opportunity to make its claim before IRP/RP when Corporate Debtor was undergoing CIRP. Now, Petitioner is appearing before this Tribunal and making a claim against Corporate Debtor when the Resolution Plan filed for the Corporate Debtor was approved by the Tribunal and the plan binds on all the stakeholders including the Petitioner. Therefore, the Petitioner
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cannot maintain this Petition under Section 9 of IBC against the Corporate Debtor.

9. It is true, provisions of Limitation Act would apply by virtue of Section 238A of IBC. Admittedly, alleged debt is arising out of the invoices raised for the months of December 2011 to March 2012. The Petitioner has filed this Petition on 20.07.2018 which is beyond three years from the date of alleged default. When claim itself is barred by limitation then there is no question of any debt due by Corporate Debtor to the Operational Creditor and question of default does not arise when claim itself is barred by limitation. The Petition is therefore, liable to be rejected on this ground.
10. In the result, the Petition is rejected.

  
3.9.2019  
**NARENDER KUMAR BHOLA**  
**MEMBER (TECHNICAL)**

  
3.9.19.  
**RATAKONDA MURALI**  
**MEMBER (JUDICIAL)**

VISWARAJ/BINNU