

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**(IB)-58(ND)2022**

**IN THE MATTER OF:**

**M/s Beetel Teletech Limited**

(Erstwhile M/s. Brightstar Telecommunications India Limited)

Registered office at :

First Floor, Plot No. 16,

Udyog Vihar, Phase – IV,

Gurgaon, Haryana - 122015

**...Applicant/Operational Creditor**

**VERSUS**

**M/s. Arcelia IT Services Private Limited**

Registered office at :

Flat No. 26/13, Second Floor,

Deepak Building, Nehru Place,

New Delhi – 110019

**Also at:**

Level 2, Elegance Tower,

Plot No. 8, Non-Heirarchical,

Commercial Centre, Jasola,

New Delhi - 110025

**...Respondent**

**Section: 9 of the IBC, 2016**

**Order Delivered on : 17.10.2022**

**CORAM:**

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Applicant** : Adv. Kunwar Singh and Adv. Shayon Chakrabarti

**For the Respondent** : Adv. Amit Kochar



## ORDER

### PER SHRI L. N. GUPTA, MEMBER (T)

M/s. Beetel Teletech Limited (for brevity '**Applicant/Operational Creditor**') has filed the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Arcelia IT Services Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s. Arcelia IT Services Private Limited is a Company incorporated on 11.01.2000 with CIN U72200DL2010PTC201434 under the provisions of the erstwhile Companies Act, 1956, having its registered Office at Flat No. 26/13, Second Floor, Deepak Building, Nehru Place, New Delhi - 110019, which is within the jurisdiction of this Tribunal. That the Authorized Share Capital of the Respondent is Rs.10,00,000/- and Paid-up Share Capital is Rs.1,00,000/- as per the Master Data of the Respondent.

3. It is stated by the Applicant that on 07.10.2019, the Applicant and Respondent executed a Channel Partner Registration Form, wherein it was agreed by the parties to work on mutually accepted terms and conditions. It is further stated by the Applicant that -



3.1. The Respondent raised a Purchase Order bearing no AISPL/19-20/PO-032 dated 25.10.2019 upon the Applicant. Accordingly, the Applicant supplied the goods and services to the Respondent and raised the invoice bearing no. RV1927813879 dated 31.12.2019 for Rs. 1,32,45,904.84/-.

3.2 In accordance to the agreed payments terms of 60 days, the invoice dated 31.12.2019 fell due for payment on 29.02.2020. It is stated by the Applicant that the Respondent and Applicant had several meetings, wherein the Respondent had reiterated its promise to release the outstanding amount to the Respondent. However, on 23.09.2020, the Respondent made a part payment of Rs.42,50,000/-, which was duly received and adjusted by the Applicant in its books of accounts.

3.3. The Respondent issued a cheque bearing no.000189 dated 19.10.2021 of Rs.1,17,74,909.61 and assured that the same would be cleared upon presentation to the bank. However, upon presentation of the cheque to the bank on 24.11.2020, the same got dishonored.

3.4. On 17.12.2020, during a virtual meeting, the Director of the Respondent assured that the complete outstanding would be cleared by December, 2020. On 19.12.2020 and 25.03.2021, the Respondent made partial on account payments of Rs.17,74,910/- and Rs.1,00,000/- respectively, which were duly received and adjusted by the Applicant in its books of accounts.



3.5 The particulars of the amount of Debt claimed including the total amount of default and the date of default are mentioned in Part IV of the application, which are reproduced below, for the sake of convenience:

<b>PART-IV</b>				
<b>PARTICULARS OF OPERATIONAL DEBT</b>				
<b>1.</b>	<b>Total amount of debt:</b>	<p>For the purpose of the present Application The total amount of Debt due as on 15.12.2021 is Rs. 1,15,11,486/- (Rupees One Crore Fifteen Lakhs Eleven Thousand Four Hundred and Eighty Six Only). The Principal amount due is Rs. 1,01,80,986/- (Rupees One Crore One Lakh Eighty Thousand Nine Hundred and Eighty Six Only) and interest due is Rs. 13,30,500 /- (Rupees Thirteen Lakh Thirty Thousand</p>		
	<b>Details of transactions on account of which debt fell due:</b>	<p>and Five Hundred Only) for the period 29.02.2020 to 15.12.2021 calculated @ 18% P.A. as agreed.</p> <p>The transactions leading up-to the aforementioned due amount is as follows:</p> <ol style="list-style-type: none"> <li>1. That the Corporate Debtor and the Operational Creditor had executed a Registration Form/Agreement for the supply of products upon the Corporate Debtor.</li> <li>2. Pursuant to this the Corporate Debtor have raised Purchase Orders. That vide Purchase Order no. AISPL/19-20/PO-32 dated 25.10.2019 (Herein after referred to as 'PO') the Corporate Debtor has placed order upon the Operational Creditor for the procurement of various products.</li> <li>3. That the Operational Creditor supplied products as demanded by the Corporate Debtor through PO raised. Admittedly, the said products were delivered and the same has also been acknowledged by the Corporate Debtor. The details of outstanding invoice listed hereunder:</li> </ol> <table border="1" style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 60%;"><b>Purchase Order No. &amp; Date</b></td> <td><b>AISPL/19-20/PO-32</b></td> </tr> </table>	<b>Purchase Order No. &amp; Date</b>	<b>AISPL/19-20/PO-32</b>
<b>Purchase Order No. &amp; Date</b>	<b>AISPL/19-20/PO-32</b>			



	dated 25.10.2019
<b>Tax Invoice No.</b>	RV192781387 9
<b>Date of Tax Invoice</b>	31.12.2019
<b>Due date for Payment</b>	29.02.2020
<b>Amount (in INR)</b>	1,32,45,904.84 /-

4. That as per the agreed payment terms the payment for the aforesaid supplies were to be made within 60 days from the date of invoice. However, the Corporate Debtor has failed to make the payment within the agreed timelines against the invoice. It was agreed by means of the Registration Form/Agreement executed that in case the Corporate Debtor failed to remit the amounts towards the invoice within 60 days, interest at 18% P.A. would be payable to the Operational Creditor in terms of clause no. 12.8.2. The clause 12.8.2 is reproduced below:

*"12.8 Brightstar reserves the right to:-*

...

*12.8.2 Charge you interest on the outstanding amount due to Brightstar at the rate of eighteen per cent (18%) per annum, calculated on a day to day basis commencing from the due date for such payment until*



*date of actual receipt of the payment of the outstanding amount by Brightstar,...*"

5. That the Corporate Debtor and the Operational Creditor had several meetings wherein the Corporate Debtor has promised to make the payment. That on meeting dated 01.07.2020 in which the Corporate Debtor had reiterated his promise to release the outstanding payment. It is noteworthy that the Corporate Debtor had failed to release payment and failed to adhere to his commitment. After incessant follow ups only delayed on account payment of small amount of Rs. 42,50,000/- (Rupees Forty Two Lakhs Fifty Thousand Only) was made on 23.09.2020 against the total outstanding.

6. That upon mutual deliberations and in discharge of the Corporate Debtor's liability, the Corporate Debtor also issued the Cheque to Operational Creditor on 26.09.2020 with the promise that it shall be honored upon its presentation. The details of the cheque are as under:

- *Cheque No. '000189' dated 19.10.2020 of Rs. 1,17,74,909.61/- (Rupees*

Beetel Teletech Ltd.  
19/10/2020  
G.



*Crore Seventeen Lakh Seventy Four Thousand Nine Hundred Nine and Sixty One Paisa) drawn on ICICI Bank situated at 19, Chawla House, Nehru Place, New Delhi – 110019*

The said cheque was presented by the Operational Creditor with its banker on 24.11.2020. However, the said cheque got dishonored.

7. That on 17.12.2020 during a virtual meeting the director of the Corporate Debtor had assured that payment of the complete admitted outstanding would be made by December 2020. Thereafter, on 19.12.2020 the Corporate Debtor had made an on account part payment of Rs. 17,74,910/- against the total outstanding. However, the Corporate Debtor has again failed to clear the complete outstanding and the liability towards the outstanding invoice of the Operational Creditor as assured. Thereafter, vide email dated 30.12.2020 the Corporate Debtor had reiterated their assurance to make complete payment to the Operational Creditor and with *malafide* motive giving himself an indefinite timeline for making the same.

Beetel Tech  
INDIA



		<p>8. That due to the recalcitrant attitude and dilly delaying of the payment by the Corporate Debtor, the Operational debtor was constrained to re-present the cheque after intimation towards the outstanding payment. Upon presentation of the cheque again returned dishonored for the reason '<i>payment stopped by drawer</i>' on 11.01.2021. Thereafter, the Operational Creditor informed the Corporate Debtor w.r.t. the dishonor of the cheque and requested the Corporate Debtor to clear the outstanding, however the Corporate Debtor has not paid heed to the same.</p> <p>9. The Operational Creditor, being aggrieved with the actions of the Corporate Debtor have also instituted a complaint case against the said dishonor of cheque before the Ld. Judicial Magistrate 1<sup>st</sup> Class, Gurugram.</p> <p>10. That the Operational Creditor had issued the notice dated 14.10.2021 to the Corporate Debtor which was duly served upon the Corporate Debtor on 14.10.2021 vide email and 20.10.2021 vide speed post.</p>
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		<p>11. That on 03.11.2021 the Corporate Debtor made an on account payment of Rs. 5,00,000/- against the total liability and vide email dated 03.11.2021 reassured that the complete payment of the outstanding will be made. Further the Corporate Debtor committed making a payment of Rs. 5,00,000/- every fortnight or 10 days till the time their OD account is secured. Thereafter, on 10.11.2021 the Corporate Debtor made another on account payment of Rs. 5,00,000/-. Since 10.11.2021 the Corporate Debtor has failed to clear the outstanding liability of the Operational Creditor. Further, the statutory timeline from the receipt of the Demand Notice has also elapsed.</p> <p>12. As on date the Operational Creditor has a total outstanding of Rs. 1,74,31,990/- (Rupees One Crore Seventy Four Lakh Thirty One Thousand Nine Hundred and Ninety Only) (<i>inclusive of interest</i>) against the Corporate Debtor. However, the present Application is limited to the invoice dated 31.12.2019 bearing no. RV1927813879 without prejudice to the rights of the Operational Creditor to</p>
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claim the complete outstanding from the Corporate Debtor as per law.

13. For the purpose of the present Application the total amount of debt due as on 15.12.2021 is Rs. 1,15,11,486/- (Rupees One Crore Fifteen Lakhs Eleven Thousand Four Hundred and Eighty Six Only) against the invoice dated 31.12.2019 bearing no. RV1927813879. The Principal amount due is Rs. 1,01,80,986/- (Rupees One Crore One Lakh Eighty Thousand Nine Hundred and Eighty Six Only) and interest due is Rs. 13,30,500 /- (Rupees Thirteen Lakh Thirty Thousand and Five Hundred Only) for the period 29.02.2020 to 15.12.2021 calculated @ 18% P.A. as agreed. Needless to mention, there is no dispute between the parties w.r.t. the instant invoice.

The date from which such debt fell due:

The date of default as per pending invoice is as follows:

<b>Purchase Order No. &amp; Date</b>	AISPL/19-20/PO-32 dated 25.10.2019
<b>Tax Invoice No.</b>	RV1927813879
<b>Date of Tax Invoice</b>	31.12.2019
<b>Due date for Payment</b>	29.02.2020



		<table border="1"> <tr> <td>Principal Amount outstanding (in INR)</td> <td>1,01,80,986/-</td> </tr> <tr> <td>Interest Amount Outstanding (in INR)</td> <td>13,30,500/-</td> </tr> <tr> <td>Total Outstanding (in INR)</td> <td>1,15,11,486/-</td> </tr> </table> <p>Computation of working is annexed and marked as Annexure II-F.</p>	Principal Amount outstanding (in INR)	1,01,80,986/-	Interest Amount Outstanding (in INR)	13,30,500/-	Total Outstanding (in INR)	1,15,11,486/-				
Principal Amount outstanding (in INR)	1,01,80,986/-											
Interest Amount Outstanding (in INR)	13,30,500/-											
Total Outstanding (in INR)	1,15,11,486/-											
2.	<p><b>Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and</b></p>	<p>For the purpose of the present Application The total amount of Debt due as on 15.12.2021 is Rs. 1,15,11,486/- (Rupees One Crore Fifteen Lakhs Eleven Thousand Four Hundred and Eighty Six Only). The Principal amount due is Rs. 1,01,80,986/- (Rupees One Crore One Lakh Eighty Thousand Nine Hundred and Eighty Six Only) and interest due is Rs. 13,30,500 /- (Rupees Thirteen Lakh Thirty Thousand and Five Hundred Only) for the period 29.02.2020 to 15.12.2021 calculated @ 18% P.A. as agreed</p> <p>The date of default as per pending invoice is as follows:</p>										
	<p><b>default in tabular form)</b></p>	<table border="1"> <tr> <td>Purchase Order No. &amp; Date</td> <td>AISPL/19-20/PO-32 dated 25.10.2019</td> </tr> <tr> <td>Tax Invoice No.</td> <td>RV1927813879</td> </tr> <tr> <td>Date of Tax Invoice</td> <td>31.12.2019</td> </tr> <tr> <td>Due date for Payment</td> <td>29.02.2020</td> </tr> <tr> <td>Principal Amount outstanding (in INR)</td> <td>1,01,80,986/-</td> </tr> </table> <p>The workings for computation of default in a tabular form is attached herewith, marked and annexed as Annexure II-F.</p>	Purchase Order No. & Date	AISPL/19-20/PO-32 dated 25.10.2019	Tax Invoice No.	RV1927813879	Date of Tax Invoice	31.12.2019	Due date for Payment	29.02.2020	Principal Amount outstanding (in INR)	1,01,80,986/-
Purchase Order No. & Date	AISPL/19-20/PO-32 dated 25.10.2019											
Tax Invoice No.	RV1927813879											
Date of Tax Invoice	31.12.2019											
Due date for Payment	29.02.2020											
Principal Amount outstanding (in INR)	1,01,80,986/-											



4. As per Part IV of the Application, the Applicant has claimed an amount of Rs. 1,15,11,486/-. (Principal amount of Rs. 1,01,80,986/- + interest of Rs. 13,30,500/- for the period from 29.02.2020 to 15.12.2021 calculated @ 18% per annum) as an operational debt. Further, the date of default relied by the Applicant is of 15.12.2021.

5. On issuance of notice, the Respondent has filed its reply and raised the following objections -

- i) The Applicant is not an operational creditor in terms of Section 5(20) and the debt claimed under the application is not an operational debt in terms of Section 5(21) of IBC.
- ii) Mr. Niraj Barkakati is not properly authorized to file the present application since its authority to file the present application is defective.
- iii) On 25.10.2019, Respondent raised a purchased order bearing no. AISPL/19-20/PO-32 in accordance with the agreement dated 07.10.2019 executed between the parties. The said purchase order mentioned that any missing product or deviation in the delivery of the consignment shall result in non-acceptance of goods.
- iv) The Applicant made a partial delivery of the consignment and raised an invoice no. RV 1927813879. The Respondent informed the Applicant by email dated 28.11.2019 that the partial delivery of the consignment will not be accepted. Vide emails dated 28.11.2019 and 25.02.2020, it was acknowledged by the Applicant that it was bound to deliver the goods in entirety and not in parts for qualifying the payment.



- v) As per the terms of the said Agreement, it was agreed between the parties that the Petitioner shall undertake to deliver the consignment in accordance to the terms of the Purchase Order and a tax invoice shall be raised against the delivery of such products only when the delivery is affected in accordance to the terms of the Purchase Order. The relevant clauses of the said Agreement are reproduced hereunder for ready reference :

***“Clause 9.1 The terms of the delivery shall be in accordance with the delivery terms specified in the Purchase Order.***

***Clause 12.3 Brightstar shall submit to you a tax invoice following dispatch by Brightstar of the product to you in accordance with the terms of the Purchase Order and this Agreement.”***

- vi) Owing to the deviations by the Applicant in performance of the Purchase Order, it was agreed between the parties that the payment of the outstanding amount will be completed on delivery of the complete consignment of the goods as per the terms of the said Purchase Order. The relevant clause of the said Agreement is reproduced for ready reference:

***“Clause 12.5 Payment on a Brightstar Standard Credit amount is to be received by the Brightstar by the due date stated in The Tax Invoice (unless other arrangements have been agreed with Brightstar in writing including where it is applicable from time to time as a condition of acceptance of your purchase order.”***

- vii) Upon bare perusal of the Clause 9.1, 12.3 and 12.5 of the said Agreement and email dated 2<sup>nd</sup> July 2002, it would



be clear that the said Invoice did not became due and payable on 29<sup>th</sup> February 2020 as the Respondent/Applicant failed to deliver the consignment as per the terms and conditions of the said Agreement, the Purchase Order and revised terms of the payments as per clause 12.5 of the said Agreement. Since the said invoice did not became due and payable, the cause of action for filing the present application does arise and thereby, present proceeding is pre-mature and baseless.

viii) There is an arbitration clause 23.8 in the Agreement executed by between the parties, hence the present application is not maintainable.

6. During the course of hearing on 23.09.2022, the Ld. Counsel for the Respondent submitted that the Applicant has not considered the part-payments reflected in list of dates and events of the application while computing the unpaid operational debt. It was further submitted that, had the aforesaid amounts been adjusted, the unpaid operational debt would have been less than Rs. 1 Crore.

7. The Applicant has filed its Written Submissions and Rejoinder and stated that the Respondent vide email dated 03.11.2021 assured the Applicant that the payments would be made in full by remitting on-account payments of Rs.5,00,000/- every 10 days or fortnight. Thereafter, the Respondent made only two on-account payments of Rs.5,00,000/- each on 03.11.2021 and 10.11.2021 and thereafter, it failed to make payments as promised. It is stated by the Applicant that it had adjusted the part-payments made by the Respondent and after



adjusting the amounts, it had arrived at the claim amount as mentioned in Part IV of the application.

8. After hearing submissions of both the parties and perusing the documents and written submissions placed on record, this Bench observes that though the Respondent has not replied to the statutory Demand Notice, it has filed the reply and contended that the present petition is baseless and pre-mature.

9. On perusal of the Part IV of the application, it is observed that the Applicant has claimed an amount of Rs.1,15,11,486/-, comprising of the principal amounting to Rs.1,01,80,986/- and interest Rs.13,30,500/- from 29.02.2020 to 15.12.2021 @ 18% per annum. From the period for which the interest is being claimed by the Applicant, we observe that the majority of the period is falling under the suspension period of IBC (i.e., from 25.03.2020 to 24.03.2021), for which no CIRP can ever be initiated as stipulated under Section 10A of IBC, 2016. Hence, in our view, no interest can be claimed for the suspension period of IBC for triggering CIRP. Further, as held in the catena of the Judgements, this Tribunal is not a court of recovery, therefore, we will not indulge in calculating the interest amount for the remaining period.

10. As already noted above, the principal amount claimed by the Applicant is Rs.1,01,80,986/-, which is arising out of the unpaid invoice no. RV 1927813279.



11. In the course of hearing, it was contended by the Respondent that the Applicant has not adjusted all of the following part-payments towards the said invoice while calculating the debt amount claimed.

Sl. No.	Date	Amount (in Rs.)
1.	23.09.2020	42,50,000
2.	19.12.2020	17,74,910
3.	24.03.2021	25,00,000
4.	3.11.2021	5,00,000
4.	10.11.2021	5,00,000
<b>TOTAL</b>		95,24,910

It was argued that if the abovesaid part-payments are considered, the total outstanding dues would get reduced significantly. Per contra, the Applicant has stated in its written submissions that it had adjusted the Part-Payments in the following manner :

S. No.	Payment Receipt amt. (In Rs.)	Payment Receipt date	Adjustment Towards
1.	30,62,692/-	23.09.2020	Rs. 27,79,005/- towards principal outstanding of invoice no. RV1927813875 & Rs. 2,83,687/- towards interest of invoice no. RV1927813875.
2.	11,87,308/-	23.09.2020	Rs. 11,87,308/- towards interest of Invoice no. RV1927813879.
3.	1,64,863/-	19.12.2020	Rs. 1,64,863/- towards interest of Invoice no. RV1927813879
4.	16,10,047/-	19.12.2020	Rs. 5,68,304/- towards interest of Invoice no. RV1927813879 & Rs. 10,41,743/- towards interest of invoice bearing no. RV1927813879
5.	25,00,000/-	24.03.2021	Rs. 5,71,757/- towards interest of invoice bearing no. RV1927813879 & Rs. 19,28,243/- towards principal invoice bearing no. RV1927813879
6.	1,00,000/-	25.03.2021	Rs. 5068/- adjusted towards interest of invoice bearing no. RV1927813879 and Rs. 94,932/- towards principal of



			invoice bearing no. RV1927813879
7.	1/-	06.08.2021	Re. 1/- adjusted towards interest of invoice bearing no. RV1927813879.
8.	5,00,000/-	03.11.2021	Rs. 5,00,000/- adjusted towards interest of invoice bearing no. RV2027804572
9.	5,00,000/-	08.11.2021	Rs. 3,54,296/- adjusted towards interest of invoice bearing no. RV2027804572 & Rs. 1,45,704/- adjusted towards invoice bearing no. RV2027804572

*[Refer to Computation of outstanding @ page no. 60 of Petition]*

12. From perusal of the aforesaid table, it is observed that whereas the payments made on the earlier dates except the payment reflected at Serial no.1 are adjusted against the invoice no. RV1927813879, the part-payments dated 03.11.2021 and 08.11.2021 made by the respondents as reflected at serial. no. 8 and 9 are adjusted towards the interest outstanding of the invoice bearing No. RV2027804572. Hence, we do not find any consistency or pattern in the treatment accorded to the part-payments, while adjusting the same towards the outstanding dues. Had the amounts mentioned at Serial No. 8 and 9 been adjusted towards the invoice RV1927813879, the principal amount would be less than the minimum stipulated threshold of Rs 1 (one) Crore.



13. We further observe that the invoice claimed in Part IV of the present application is only RV1927813879 and the other invoices as referred in aforesaid table are neither produced nor are the subject matter of the present petition. Hence, in our considered view, further investigation and scrutiny of facts is required that as to why the subsequent payments made on 08.11 2021 are adjusted against the invoice no. RV2027804572, whereas the previous payments made on 24.03.2021 and 25.03.2021 are adjusted towards the Invoice under reference i.e., RV1927813879.

14. In view of the above, the Applicant has failed to establish beyond doubt the quantum of the unpaid operational debt above the minimum threshold of Rs. 1 (one) Crore subsisting.

15. **The application is accordingly Dismissed.**

**(L. N. GUPTA)**  
**MEMBER (T)**

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (J)**