



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 1090/MB/2022

[With IA(IBC) No. 2362/MB/2023]

*[Under Section 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:

HAABIA RESOURCES PRIVATE LIMITED

[CIN: U45400TG2005PTC048623]

Registered Office: 2-38/4, Pillar No. C-1721

Sreerama Colony, Guttala Begumpet, Hi-Tec City

Hyderabad-500081, Telangana.

...Operational Creditor

V/s

VIDYUT METALLICS PRIVATE LIMITED

[CIN: U72900MH2006PTC165215]

Registered Office: Malhotra House, 4th Floor

Opposite General Post Office, Fort

Mumbai - 400001, Maharashtra.

...Corporate Debtor

Pronounced: 21.03.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Siddhant Sawhney a/w. Adv. Ajit Anekar and
Adv. Anuj Bhattad i/b Auris legal

Corporate Debtor: Adv. Shyam Kapadia a/w Adv. Shweta Jaydev, Adv.
Anuja Bhanushali, Adv. Rohaan Cama, Adv. Aman
Sadiwala & Adv. Abhyarthana Singh i/b Rashmikanth &

Partners and Mr. Raymond Gadkar, Corporate
Debtor's Representative

ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This C.P. (IB) No. 1090/MB/2022 (Application) was filed on 23.03.2022 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AAA Rules) by Haabia Resources Private Limited, the Operational Creditor (OC), through Mr. Nadendla Venkata Ratnam, Director of the OC, authorised *vide* Board Resolution dated 13.02.2020, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Vidyut Metallica Private Limited (VMPL), the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.8,40,22,672/- (Eight Crore Forty Lakh Twenty-Two Thousand Six Hundred Seventy-Two Rupees) as on 31.01.2020, including the principal amount of Rs.79,45,073/- along with Rs.7,60,77,599/- as compounded monthly interest from 26.02.2011 till 31.01.2020, calculated at the rate of 18 (Eighteen) to 28.5 (Twenty-Eight point five) per cent. per annum i.e., interest at three times of the Bank Rate as per Reserve Bank of India (RBI) notification. It is based on default in the payment of two arbitration awards dated 26.02.2011, made in OC's favour against the CD by the Andhra Pradesh State Micro and Small Enterprises Facilitation Council, Hyderabad (MSME Council Awards).



1.3 The date of default is not expressly mentioned in Part-IV of the Application.

However, the MSME Council Awards dated 26.02.2011 are the basis of the alleged operational debt in the present Application. Since the CD defaulted in payment of its outstanding dues, the OC prayed that CIRP may be initiated in respect of the CD under Section 9 of the IBC.

1.4 The CD filed the IA (I.B.C) No. 2362/MB/2023 on 10.04.2023, under Sections 65 and 76 of the IBC read with Rule 11 of the National Company Law Tribunal Rules, 2016, to challenge the maintainability of the present Application on the ground of limitation and absence of debt and default by the CD. The CD also seeks imposition of maximum penalty against the OC and its directors under Section 76 of the IBC for punishment for false information furnished in the Application before this Tribunal.

2. CONTENTIONS OF OC

2.1 The OC is a Hyderabad-based private company registered under the Companies Act, 1956, and is engaged in the manufacturing of packaging material while the CD's business is manufacturing of personal care equipment such as blades, etc. For packaging its goods, the CD sought materials from the OC, pursuant to which the OC supplied the same during the period of 2006 and 2008. However, the CD failed to pay the outstanding dues to the OC.

2.2 On account of CD's failure to pay the outstanding dues, the OC filed the two arbitration proceedings *vide* Case Nos. 66/2008 and 60/2009 before the Andhra Pradesh State Micro and Small Enterprises Facilitation Council, Hyderabad (MSME Council). The MSME Council passed the two orders dated 26.02.2011 in OC's favour, wherein the CD was directed to pay Rs. 72,48,465/-



and Rs. 6,96,608/- respectively, with compound monthly interest at the rate of three times the bank rate under the RBI notification.

2.3 The CD challenged the MSME Council Awards before the Ld. Chief Judge, City Civil Court, Hyderabad under Section 34 of the Arbitration and Conciliation Act, 1996 (A&AC Act), which got dismissed *vide* its order dated 05.03.2012. Aggrieved by the said order, the CD challenged the same before the Hon'ble Andhra Pradesh High Court and even before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court did not set aside the MSME Council Awards, which had attained finality. The fact that CD's Appeal was withdrawn from the Hon'ble Supreme Court is reflected in its order dated 11.03.2013.

2.4 Meanwhile, the CD entered into a Business Transfer Agreement dated 30.12.2010 (BTA) with Supermax Personal Care Private Limited (SPCPL), wherein the CD's assets and liabilities were sold on slump sale basis for an aggregate transfer price consideration. Similarly, SPCPL had entered into another BTA with RCC Sales Private Limited (RCC). Later, the OC [then Haabia Advertising (India) Private Limited] and SPCPL executed a Memorandum of Consent Terms dated 23.09.2016 (Consent Terms), wherein the OC was to receive the amount of Rs.1,90,00,000/- in full and final settlement regarding claims based on the MSME Council Awards in lieu of withdrawing litigations against SPCPL. However, under Clause 4 of the Consent Terms, the OC retained its right to seek its claims against the CD based on the MSME Council Awards.

2.5 As the CD's assets and properties were situated in Mumbai, the OC filed the Execution Application (L) No. 1050/2017 & 1051/2017, before the Hon'ble Bombay High Court, which is still pending.



- 2.6 However, despite being aware of the MSME Council Awards, the CD failed to make any payment to the OC. Therefore, the OC issued demand notice dated 01.12.2019, under Section 8 of the IBC, which was received by the CD on 09.12.2019. The CD denied its liability to the OC *vide* its reply notice dated 19.12.2019, citing transfer of its liabilities to SPCPL and it being discharged of every liability towards the OC, pursuant to the Consent Terms between the OC and SPCPL.
- 2.7 The OC placed on record, affidavit dated 06.08.2022, under Section 9(3)(b) of the IBC, stating that there is no notice from the CD regarding existence of any dispute or pendency of a suit or arbitration proceeding, before service of the demand notice dated 01.12.2019. Though, the CD had replied to the OC's demand notice, it was not done within the period of 10 days from the receipt of the demand notice.
- 2.8 There is no pre-existing dispute between the parties. Further, the OC had withdrawn its Appeal (I) No. 627 of 2015 against SPCPL, which was pending before the Hon'ble Bombay High Court, pursuant to the above-mentioned Consent Terms. However, the OC did not receive any amount from the CD as full and final settlement regarding its operational debt. The Consent Terms had no bearing on the debt due and payable by the CD to the OC.
- 2.9 The OC had changed its name from 'Haabia Advertising (India) Private Limited' to 'Haabia Resources Private Limited', i.e., its current name, which is evident from the Certificate of Incorporation dated 20.10.2020.
- 2.10 In view of the foregoing reasons, the OC prays that CIRP may be initiated in respect of the CD.



3. CONTENTIONS OF CD

3.1 The Application is barred by limitation as the MSME Council Awards were passed by MSME Council *vide* order dated 26.02.2011, while the present Application is filed on 23.03.2022, which is much beyond the limitation period of three years as per Article 137 of the Limitation Act, 1963.

3.2 The CD was not liable to the OC in relation to the MSME Council Awards since its assets and liabilities were already transferred to the SPCPL under the BTA dated 30.12.2010. The said BTA was executed between the CD and SPCPL under the restructuring process by Mr. Rajinder Kumar Malhotra, CD's owner as well as founder of Supermax Group. Annexure 2 of the BTA stated the list of liabilities transferred to the SPCPL, including the amount of Rs.41,00,000/- payable to the OC. However, Mr. Rakesh Malhotra, his elder son, in collusion with some of CD's hostile directors initiated legal disputes over transfer of CD's assets. This led to a situation where Mr. Rajinder Kumar Malhotra was unaware of the affairs of the CD, including the legal issues during the period from 2011 to 2014, and only after the end of litigations before the Bombay HC and Company Law Board in 2015-16, and appointment of the CD's new directors, the CD's management came to know about the lacklustre attempts of its previous management to challenge the MSME Council Awards before various fora. During that period, the OC tried to enforce the MSME Council Awards through Execution Petitions Nos. 96 and 98 before the Ld. Principal District Judge, NTR Nagar, Hyderabad. The Execution Petitions remained unexecuted as the District Court's order dated 13.08.2012, did not state that SPCPL was either a judgment debtor or party to the proceedings, and as such, warrant of attachment could not be issued. The Execution Petitions were later



withdrawn. This shows that the OC was aware of the BTA from the year 2012 itself.

3.3 Besides the existence of BTA and transfer of CD's liabilities to SPCPL, the OC also suppressed other material facts before the Tribunal such as, order dated 11.06.2015, passed by Hon'ble Bombay HC in Company Petition No. 25 of 2014, wherein the OC had filed the winding up petition against the SPCPL, under Section 434 of Companies Act, 1956, etc. Further, the fact regarding the filing of Execution Application Nos. 1050 of 2017 and 1051 of 2017, before the Hon'ble Bombay HC by the OC to enforce the MSME Council Awards was also suppressed from this Tribunal. Another material fact suppressed by the OC was that it even obtained an *ex-parte* order on 03.09.2018 from the Hon'ble Bombay HC, in Chamber Summons Nos. 564/2017 & 566/2017, restraining the CD from creating third-party rights over its assets, which was later set aside *vide* order dated 21.09.2018 by the High Court.

3.4 The OC's, claims based on the MSME Council Awards, are misplaced since it had already received Rs.1,90,00,000/- in full and final settlement from SPCPL, which was almost equivalent of its claims under the MSME Council Awards against the CD & RCC. This fact is evident from Clause 6 of the Consent Terms, while Clauses 2,3,4 & 9 of the Consent Terms show that the OC was aware of the transfer of RCC and MSME Council Awards to SPCPL's favour. Moreover, the OC was also aware of two separate BTAs of the SPCPL with the CD and the RCC, as evident from the OC's reply to the IA (IBC) No. 2362/MB/2023. Hence, the OC's contention re that liabilities of the CD under MSME Council Awards were not transferred to SPCPL is false and baseless.



3.5 The OC's intention to recover money from the CD is evident from the fact that it had already filed a Company Petition under Section 9 of the IBC *vide* Diary No. 2709138/01040/2020 on 03.03.2020. It was after 2 years that it filed the present Application against the CD, with its changed name, which is identical to its first Company Petition, without withdrawing the same. The NCLT is not a debt collection forum and, therefore, it is clear that the OC is attempting recovery through the present Application, which is against the objectives of the IBC. Hence, the Application may be dismissed.

4. REJOINDER OF OC

4.1 The Application based on the MSME Council Awards is valid and maintainable. The Application is filed within the limitation period since the limitation period for execution of award under Article 136 of the Limitation Act is 12 (Twelve) years from the time when the decree or order becomes enforceable. As the MSME Council Awards were passed on 26.02.2011, and had attained finality on 11.03.2013, after withdrawal of CD's Appeal from the Hon'ble Supreme Court, the said Awards were enforceable through the present Application, which was filed on 23.03.2022. The CD has failed to produce evidence regarding applicability of Article 137 of the Limitation Act.

4.2 The OC denied the CD's contention of suppression of fact regarding the filing of Company Petition No. 25 of 2014, before Hon'ble Bombay HC and submitted that it later withdrew the Appeal (L) No. 627/2015, pursuant to the Consent Terms with the SPCPL. Hence, it was entitled to proceed against the CD over MSME Council Awards as per Clause 10 of the Consent Terms.



4.3 Contrary to the CD's contention, the present Application contained all the relevant documents to adjudicate the matter and there is no pre-existing dispute between the parties since the cause of action is MSME Council Awards dated 23.02.2011.

4.4 As far as the first Company Petition before this Tribunal is concerned, it is submitted that it was filed physically on 03.03.2020 as *Haabia Advertising (India) Private Limited Vs. Vidyut Metallica Private Limited* bearing diary No. 2700990055052020, prior to online filing system. After being informed about acceptance of petitions filed only through e-filing system from April 2020 onwards, the Respondent was constrained to file the present Application in accordance with the new e-filing procedure on 22.03.2022, although the present Application is similar to the first Company Petition.

4.5 The IA filed by the CD challenging maintainability of the Application is only with the intention to delay the CIRP of the CD. The fact that the Applicant failed to produce any relevant documents for substantiating its case show the frivolous nature of the said IA.

5. ANALYSIS AND FINDINGS

5.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the OC and the CD.

5.2 The sole issue to be determined in C.P. (IB) No. 1090/MB/2022 is limitation; and the only issue in IA (IBC) No. 2362/MB/2023, is whether any action is called for against the OC and its directors under Sections 65 and 76 of the IBC.

5.3 As regards the issue of limitation with respect to C.P. (IB) No. 1090/MB/2022, upon perusal of available documents, we find that the OC's claims are based on the MSME Council Awards dated 26.02.2011. The said Awards were



challenged by the CD before the Ld. City Civil Court, Hyderabad by filing of Arbitration O.P. Nos. 1101/2011 & 1102/2011, which were dismissed *vide* orders dated 05.03.2012. Later, the CD appealed against the orders before the Hon'ble Andhra Pradesh High Court. The High Court dismissed the CD's appeal *vide* order dated 30.01.2013 in C.M.A. Nos. 448, 449 & 451 of 2012. The CD approached the Hon'ble Supreme Court but the appeal was withdrawn as recorded in the order of the Hon'ble Supreme Court dated 11.03.2013. Therefore, it can be seen that the MSME Council Awards had attained finality pursuant to the withdrawal of CD's appeal from the Hon'ble Supreme Court. The MSME Council Awards were passed in favour of the CD on 23.02.2011. However, the present Application was filed by it on 23.03.2022, which is much beyond the limitation period of three years from the date of default as per Article 137 of the Limitation Act. It is well established that proceedings under the IBC are not in the nature of execution of decrees. Hence, we are unable to accept the contention of the OC that Article 136 of the Schedule to the Limitation Act is applicable in the present matter, which is filed under Section 9 of the IBC. The Hon'ble Supreme Court in *B.K. Educational Services Private Limited Vs. Parag Gupta and Associates.*, [Civil Appeals No. 23988/2017 with Nos. 436,439,3137,4979,5819 & 7286 of 2018], has held in clear terms that Article 137 of the Limitation Act shall be applicable in matters under the IBC. The MSME Council Awards were passed in 2011 and had attained finality in 2013, whereas the present Application was filed on 23.03.2022. Hence, the Application is clearly hit by Section 238A of the IBC read with Article 137 of the Limitation Act. Thus, we hold that the present Application is hopelessly barred by limitation.



5.4 As far as the issue of taking legal action against the OC is concerned, upon perusal of IA(IBC) No. 2326/MB/2023, we observe that the CD had sought penalty under Section 65 of the IBC against the OC and its directors for filing the Application for purposes other than insolvency resolution of the CD. It is also prayed that action under Section 76 of the IBC may be initiated against the OC for non-disclosure of dispute or payment of debt by the OC. However, having considered the facts and circumstances in the matter, we are not inclined to pass any order in the aforesaid IA, and consequently, **IA(IBC) No. 2362/MB/2023 is dismissed.**

ORDER

In the result, CP (IB) No. 1090/MB/2022 filed by Haabia Resources Private Limited, the OC, under Section 9 of the IBC read with Rule 6 of AAA Rules, for initiating CIRP in respect of Vidyut Metalics Private Limited, the CD, is **rejected**.

We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the OC before any other judicial forum shall not be prejudiced on the grounds of rejection of this Application.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//