

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

CP (IB) No.74/BB/2021
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s Micron Electricals,

Registered Office at:
No. 86/E-1, 3rd Main Road, 2nd Cross,
Industrial Suburd, 2nd Stage,
Yeshwanthpur,
Bengaluru – 560 022.

... Petitioner/Operational Creditor

Versus

M/s Aishwarya Heights Infra Private Limited,

Registered Office at:
No. 27, KG Road,
Gandhinagar
Bangalore- 560 009.

... Respondent/Corporate Debtor

Order delivered on: 28th February, 2023

Coram: Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Ms. Aishwarya Nair
For the Respondent : Sh. Dhyan Chinappa, Sr. Counsel a/w
Sh. Shrikar AJ

ORDER

Per: T.Krishnavalli, Member (Judicial)

1. The present petition is filed on 13.07.2021 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 2016, by M/s Micron Electricals (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. Aishwarya Heights Infra 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. 1,56,45,845/-. (Rupees One Crore Fifty-Six Lakhs Forty- Five Thousand Eight Hundred and Forty-Five Only) comprising unpaid operational debt of Rs 1.41.67,183/- and Rs 14,78,661/- towards interest at the rate of 18% per annum on the operational debt payable from the respective due dates.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
3. The Operational Creditor is in the business of refurbishment, supply, installation, testing and commissioning of Electrical and HT works.
4. It is submitted that the Corporate Debtor approached the operational creditor for refurbishment, supply, installation, testing and commissioning of Electrical and HT works at a mall developed by Aishwarya Heights Infra Private Limited at Bengaluru, Karnataka and subsequently the corporate debtor issued a work order bearing reference no. AHIPL/WO/2017-18/006 dated 01.06.2017.
5. It is further submitted that the Petitioner immediately commissioned the work as per the work order issued by the Corporate debtor. Further the petitioner raised invoices against the works completed to the Corporate debtor for a total amount of Rs. 1,51,67,183/- the first of which were due and payable on 16-07.2018. Moreover, the respondent had duly acknowledged the works completed by way of the said invoices. The particulars of the unpaid invoices and the outstanding amount is as under:



Invoice Number	Invoice Date	Invoice value	Invoice Due Date	Balance Outstanding
MEGB 586	19.02.2019	2,59,980	21.03.2019	2,55,574
MEGB 344	05.10.2018	7,30,738	04.11.2018	7,18,353
MEGB 584	18.02.2019	15,64,739	20.03.2019	13,39,311
MEBT 175	16.06.2018	15,22,175	16.07.2018	2,98,761
MEGB 490	10.12.2018	12,02,258	09.01.2019	10,29,052
MEGB 659	25.03.2019	3,94,838	24.04.2019	3,04,434
Total				39,45,484/-

6. It is submitted that despite of several requests made by the Operational Creditor and several assurance given by the corporate debtor a total outstanding amount of Rs. 1,41,67,183/- is due and payable by the respondent to the petitioner under the above mentioned invoices. Further, the statement showing the particulars of the invoices, invoice amount and the amount due for payment are produced along with the petition and vide additional document dated 19.10.2022 has produced more invoices, consolidated statement and additional work quotation.
7. It is submitted the petitioner was left with no option and was constrained to issue statutory demand notice dated 23.02.2021 in Form – 3 under Rule 5 of the Insolvency Bankruptcy Code, 2016 demanding payment in respect of operational debt along with an interest of Rs 14,78,662/- totally amounting to Rs. 1,56,45,845/-. Further, demand notice under section 8 was also sent to the respondent through e-mail.
8. Moreover the operational debt specified is an undisputed debt as the respondent has neither replied to the notice sent by the operational creditor, even actively refusing the same, nor has he produced any material or record showing repayment of such operational debt in spite of due and valid delivery of statutory demand via email.
9. It is further submitted that the petition is filed well within the period of limitation which under Section 238A of the Code read with



Section 18 of the Limitation Act 1963 is three years from the date of default. The date of default occurred with effect from respective due date of each invoice the first being 16.07.2018.

10. The Learned counsel for the respondent in his objection/written submission dated 01.04.2022 submits the following.
11. It is submitted that the petitioner worked for the respondent from June 2017 until July 2019. During this time, the petitioner procured various electrical systems and installed only a few of them and until date has not commissioned these systems. Further, as per the terms of the work order, 10% of the total project cost was mobilization advance, upon procurement 80% of the value of the systems were to be paid and only upon installation and commissioning of the systems which would be certified by electrical consultant of the respondent, the balance 10% of the value of the electrical systems were to be paid.
12. It is submitted that since 2019, when the petitioner ceased to do work and left the site with incomplete work, the respondent has had to employ a different contractor to complete, implement and commission the electrical works in the mall.
13. The Petitioner has submitted documentation such as invoices in the Petition for a debt of only for Rs. 39,45,484 (Rupees Thirty Nine Lakhs Forty Five Lakhs Four Hundred and Eighty Four). The Petitioner in its petition has submitted annexures only for this amount.
14. It is submitted that the petitioner, in its demand notice dated 23.02.2021, allegedly sent to the respondent has included only 6 invoices in its claim which amount to only Rs 39,45,484 (Rupees Thirty Nine Lakhs Forty Five Lakhs Four Hundred and Eight Four). Further, it is a settled proposition of law that the demand notice should contain the entire debt amount and during the proceedings before this Tribunal. Moreover, the petitioner cannot attempt to increase the claim amount by way of a memo or by submitting additional invoices or claims.



15. Accordingly, it is submitted that the amount of money unpaid as claimed by the petitioner themselves is less than Rs. 1 crore. Further, even if this alleged claim has arisen from uncertified and unverified bills raised by the petitioner, the claimed payment is not due. The claimed payment, if any arises only upon commissioning of the work. It is admitted fact that the electrical works have not yet been commissioned, accordingly no payment is due.
16. The Learned Counsel for the Respondent also relied on the judgment of Hon'ble NCLAT in the case of "*Neeraj Jain v. Cloudwalker Streaming Technologies Private Limited*", Company Appeal (AT) (Insolvency) No. 1354 of 2019, wherein the Tribunal held that "*the above contention cannot be accepted because we have found that demand notice delivered under Section 8(1) of the Code was not proper and was also incomplete. The operational creditor failed to submit any documents to prove in existence of the Operational debt and the amount in default. The operational creditor also failed to submit the copy of invoices and copies of all documents referred in the application to be submitted in Form 5, under Section 9 of the Code. The operational creditor has failed to submit the relevant document under which the debt has become due. The operational Creditor has only filed the copy of the Supply Agreement, and the projection email, which by themselves can by no stretch of the imagination constitute proof of debt*".
17. The respondent further denies receipt of the statutory notice sent in Form 3 of the IBC. This notice was sent to the project site and not to the corporate office of the respondent. It is submitted that this was a deliberate tactic of the petitioner to catch the petitioner unawares and surreptitiously initiate insolvency proceedings against a solvent law bidding company.
18. On 06.07.2022, the Learned Counsel for the petitioner sought time to file certain documents as well as written argument and 2 weeks' time was granted by this tribunal. The compliance to this was made



vide Dy.No. 4531 and 5051 dated 20.10.2022 and 24.11.2022. And on 11.01.2023 this tribunal directed the respondent to file written submissions and said direction was complied vide Dy No. 608 dated 01.02.2023. The documents produced and the written submissions are taken on record.

19. Heard the learned Counsel for the Petitioner and the Respondent. We have carefully perused the pleadings of the party and extant provisions of the Code, and the Rules made thereunder.
20. The Corporate Debtor approached the Operational creditor to act as an electrical contractor to do all the electrical related works in the Respondent's proposed mall in Bangalore. It is contended that the Operational creditor raised invoices against the works completed, but despite several requests the respondent failed to make payment.
21. It is observed that the amount of default mentioned in Form No. 5 is Rs. 1,56,45,845/- , and the default occurred with effect from respective due date of each invoice, the first being 16.07.2018. The present petition is filed on 13.07.2021. Hence the petition is well within the limitation.
22. It is observed that Operational Creditor has issued demand notice under section 8 of the IBC, 2016 in Form 3 dated 26.02.2021, demanding and recalling the total outstanding amount of Rs. 1,56,45,845/- comprising unpaid operational debt of Rs. 1,41,67,183/- and Rs 14,78,662/- towards interest at the rate of 18% per annum on the operational debt. It is seen from the postal receipt and tracking report attached at Pg No. 74-75 that the demand notice has been addressed to the registered address shown in the Master data of the corporate debtor (Pg 79 of the petition) and the corporate debtor refused to accept the demand notice. Further, it is noticed that the Operational creditor had also sent email dated 8.03.2021 to the Corporate debtor containing the demand notice. In



view of the decision mentioned the demand notice is deemed to have been served.

23. The Hon'ble NCLAT in the case of "*Sri. D. Srinivasa Rao v Vaishnovi Infratech Ltd*", Company Appeal (AT) (Insolvency) No. 880 of 2020, held that, "*the present case is one where it is the Corporate Debtor who refused to accept delivery of notice, the Adjudicating Authority would not be justified in coming to conclusion that notice has not been served on the Corporate debtor. The only inference available in the given circumstance is that the Corporate Debtor was aware of the consequences and it deliberately refused to acknowledge the notice.*"
24. However, it is pertinent note that the demand notice served in Form -3 is incomplete for the reason that, the operational creditor has attached along with the demand notice invoices amounting to only Rs. 39,45,485/- (as given in Para 5 above) whereas claim is made for default of Rs 1,41,67,183/-. It is settled position that if the operational debt is of nature where the invoice is generated as part of the transaction, then in such cases the invoice become an essential document to prove the existence of the debt, and thus it has to be submitted with the application. Moreover it observed that at the time of filing the present petition on 13.07.2021, the Operational creditor in Form No. 5, Part IV has stated the amount in default to be as Rs 1,56,45,845/-. However, in Part V, Row 8 (List of other documents attached to this application in order to prove the existence of operational debt and the amount in default) the corporate debtor has attached invoices amounting to only Rs 39,45,485/-. During the hearing, Respondent Counsel pointed out that as per the Demand Notice dated 23.02.2021 (Pg. 65-69 of the Company Petition) only 6 invoices amounting to this figure are mentioned. Subsequently only after the objection raised by the respondent regarding the same and the total outstanding amount claimed and the invoice attached, the Petitioner filed additional invoices vide diary No. 4531 dated 20.10.2022.



25. Accordingly, in the light of the judgment laid down by the Hon'ble NCLAT in the case of Neeraj Jain mentioned supra, this Tribunal is of the considered opinion that the demand notice served u/s 8 of the IBC is incomplete and defective, thus the requisite condition for admission under section 9 is not satisfied.
26. Further, it is observed from Annexure 2 attached along with the petition (Statement showing particulars of invoice, invoice amount, amount paid and due amount) that the Total Receivable claim of Rs. 14,167,183/- includes total outstanding amount of Rs. 9,889,789/- only. Moreover, Bills to be raised amounting to Rs. 6,57,078 and Unbilled amount- Final Bill Closure amounts to Rs. 36,20,316/- have also been added to arrive at the amount of Rs. 1,41,67,183/- to show that threshold requirement is met. Hence it is seen that these entries are clear indication that the amounts which are included in total receivable of Rs. 1, 41,67,183/- are not yet due and therefore cannot be categorized as debt which is under default.
27. Accordingly, the present petition CP(IB) No. 74/BB/2021 is hereby **dismissed**. However, this order shall not preclude the petitioner from pursuing other remedies in accordance with law, if so advised.

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-

(T. KRISHNAVALLI)
MEMBER (JUDICIAL)