IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through physical/VC hybrid mode)

CP (IB) No.93/BB/2023
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s. Arisinfra Solutions Private Limited
Unit No.G-A-04 to 07, Ground Floor – A Wing,
Art Guild House, Pheonix Marketcity, L.B.S. Marg,
Kurla West, Mumbai – 400 070 …Operational Creditor

Versus

M/s. Allam Infinite India Private Limited
G.M. Pearl, No.06, B.T.M. Layout 1st Stage,
1st phase, Bangalore – 560 098
Bangalore, Karnataka … Corporate Debtor

Order delivered on: 01/03/2024

Coram: Hon'ble Shri. K. Biswal, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri A.Murali with Shri Vishakh Nag, Adv
For the Respondent : Shri C.K.Nandakumar, Sr.Adv. with
Ms. Natasha N. Murthy, Adv.

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 25.05.2023 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, by M/s **Arisinfra Solutions Private Limited** (for brevity 'Operational Creditor/Petitioner/OC') inter alia seeking to initiate

Corporate Insolvency Resolution Professional Process against M/s. **Allam Infinite India Private Limited** (hereinafter referred as 'Corporate Debtor'/Respondent/CD) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 1,42,81,000/- along with interest. The date of default mentioned in the Part IV of Form 5 is 11.04.2022. Affidavit U/s 9(3) (b) was placed at page 18 of CP, while Demand Notice dated 18/04/2023 under Section 8(1) was attached at Page 106.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:

- **i.** The Corporate Debtor (CD) engaged in real estate business. In December 2021, the CD approached Arisinfra Solutions Private limited for supply of steel and other real estate products and services.
- **ii.** For the purpose of acquiring the goods and materials from the OC, the CD issued a purchase order dated 30.12.2021. Against the purchase order and the requests placed by the corporate debtor, the OC continuously made supplies of the said materials and services to the CD
- **iii.** Towards the aforementioned supplies made by the OC, invoices were raised by the OC with a credit period of 90 days from the date of invoice and the same were delivered to the CD. The CD has also acknowledged the receipt of the invoices.
- **iv.** Upon completion of the credit period, the OC has issued several communications and reminders to the D requesting them to make payment towards the outstanding invoices. The CD assured the OC that it will honor the payment towards the invoices and placed additional orders with a promise to pay the entire sum due and payable along with interest to the OC.
- **v.** The OC continued to make supplies to the CD. However, no payment was made by the CD to the OC. The operational creditor again issued several reminders requesting for payment due and payable to the OC towards supply of the said materials and services.

vi. As on date, invoices from January 2022 aggregating to a sum of Rs. 1,15,93,264/- as principal and Rs. 26,87,736/- as interest at 18% is due and payable. The total outstanding debt due and payable by the CD to the OC is a sum of Rs. 1,42,81,000/-. The operational debt became due on 11.04.2022 and thereafter towards supplies made and invoices raised. The last invoice raised is dated 15.01.2022 which became due and payable on 15.04.2022.

vii. Despite several reminders issued by the OC, the CD did not come forward to make any payment. Thereafter, the OC issued a demand notice dated 18.04.2023 under section 8 of the IBC, 2016, which was served on the CD, but the CD has not issued any reply.

3. The notice in the present case was issued on 19.07.2023. On 03.11.2023, the Respondent filed its statement of objection, vide Diary No: 5591 and contended as under:

i. It is submitted that if any contractual dispute between the parties arises during the contractual period, provisions are made in the contract for resolution of such disputes. The disputes between the parties are not supposed to be decided, examined and adjudicated under IBC proceedings. Further, OC did not comply with section of 8 IBC because they have not submitted a single invoice along with the demand notice. Therefore, the petition filed by IOC is not maintainable under IBC and has to be dismissed.

ii. It is also submitted that although the OC has stated that work orders for INR 3,25,00,398.12/- were placed. However, they have only supplied steel only to a sum of Rs. 99,13,103.02/-. The project for which services are provided is incomplete and the services being rendered is not complete. The account is a Running Account and therefore, no default has occurred yet. The claims of the OC are premature, as no default has occurred.

iii. The interest claimed was never agreed between the OC and CD. The invoices produced by the OC are generated at the sole discretion of the OC. A perusal of invoices submitted by the OC shows that the said invoices are not accepted by the Cd. There is no seal or acknowledgement of receipt by the CD. The OC has submitted that the invoices for services not rendered by it. No evidence of debt has been produced by the OC. The OC has failed to prove that any debt has occurred.

iv. Several issues were raised by the sister concern company of the CD stating the Marble supplied by the OC are defective. The OC failed to resolve the issues raised by the sister concern of the company.

v. It is further declared that it is for this reason that it is enough that a dispute exists between the parties. Section 5(6) of the IBC excludes the expression of bona fide which qualifies the words suit or arbitration proceedings in Section 5(4) under Bankruptcy Law Reforms Committee Report. The case of the CD is that goods delivered were of a very poor quality. The delivery of the goods and the acceptance of the goods for use of the goods by the CD being not in dispute, the impact of Section 13(2) read with Section 59 cannot at least for CA No. 2199/2021 the purpose of determining whether there is a pre-existing dispute be ignored.

vi. The calculation of default interest as shown in the petition and is against the settled principles of law and prevailing banking practice. It is settled law that interest in respect of Section 9 can only be considered if there is a specific agreement to charge interest, which has not been produced in the present case.

vii. Moreover, the Corporate Debtor is a solvent company and they have invested huge amounts in the project.

4. The Learned Counsel for the Petitioner filed the rejoinder vide Diary No: 6116 dated 06.12.2023, citations vide diary no: 576 dated 29.01.2024 and written submissions vide diary no: 820 dated 06.02.2024. It is contended that the OC supplied various measures and quantities of TMT Steel Bars aggregating to amount of Rs. 3,25,00,398.12/- to the CD by way of Purchase Orders dated 30.12.2021 and the same was duly invoiced and delivered between 11.01.2022 and 15.01.2022. A total of 5 invoices dated 11.01.2022, 13.01.2022 and 15.01.2022. The invoices fell due for payment between 12th March 2022 and 16th March 2022 being the 90 day credit period from the date of invoice. As against the goods supplied for a total amount of Rs.3,25,00,398.12/-, the CD made a payment of

Rs.2,12,29,997/- only leaving an outstanding of Rs. 1,15,93,246/- on 04.06.2022. The OC has sent several emails from 07.11.2022 to 08.05.2023, but none of them were replied to and nor was the outstanding amount was paid to the OC. Further, in written submissions, the petitioners have relied on the decisions of Hon'ble Supreme Court in *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited [AIR 2017 SC 4532]* dated 21.09.2017 and the orders of Hon'ble NCLAT in the matters of *Ashok Kumar Bhasin Vs. ABB Power Products and Systems India Ltd.*[*(2023) ibclaw.IN313 NCLAT*] dated 11.05.2023 and in the matter of *Writers and Publishers Pvt. Ltd. Vs. M/s Oriental Coal Corporation, [(2022) ibclaw.in 1040 NCLAT]* dated 15.12.2022.

5. We have pursued the records available and also heard the Learned Counsels based on which we observe the following:

6. The Present Petition was filed on 25.05.2023 under section 9 of the Insolvency and Bankruptcy Code, 2016 by M/s Arisinfra Solutions Private Limited, *interalia* seeking to initiate Corporate Insolvency Resolution Process against M/s. Allam Infinite India Limited on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 1,42,81,000/-. Therefore the threshold requirement of Rs. 1 Crore at the time of filing of Petition is fulfilled. This Tribunal has perused the invoices, record of default Form 'D' and the statement of accounts which has been attached along with the petition and the debt is established in this regard.

7. The Petitioner has attached the copy of Demand Notice dated 18.04.2023 which was served but no reply to the demand notice was received. The CD has raised the objection that the invoices were not served with the Demand Notice as per Section 8 of IBC. In this connection, it is stated that in accordance with Section 8 as well as Section 9(3) (a); the requirement is to serve on the Corporate Debtor either the Demand Notice in Form No. 3 or copy of invoice with Form.4 before filing of this Petition. The CD has confirmed to having received the Demand Notice. Hence the requirement of Section 8 and 9 of IBC is fulfilled. Further, it is clear from the books of accounts of the OC, on 04.06.2022, that the CD has made partial payment of Rs. 2,12,29,997/- to the OC after the issuance of invoice i.e., on

11.01.2022 and 15.01.2022. The Petitioner has also filed affidavit under section 9(3)(b) of IBC dated 22.05.2023 affirming that that no notice of dispute to the unpaid operational debt has been given by the Corporate Debtor. The CD stated that there is a pre-existing dispute between the parties, but the CD has failed to produce any documentary proof in support of its arguments. In the Written Submissions filed on 06.02.2024 by the Petitioner, in which reference was also made to certain judgements of Hon'ble NCLAT cited supra, the Petitioner has addressed the issue of substandard quality of supply of goods. It is contented by the Petitioner that these were vague and unsubstantiated defense without furnishing any documents to corroborate the same. It is further noticed that the Petitioner has filed the copy of the decision of the Hon'ble NCLAT, Principal Bench, New Delhi in the case of Writers and Publishers Private Limited v.s M/s. Oriental Coal Corporate and another in Company Appeal (AT) (Insolvency) No.1170 of 2022 passed on 15.12.2022. In that case also the contention was raised by the Respondent that there was a pre-existing dispute, in so far as there was inferior quality of coal supply. However, this dispute was not raised prior to the issue of Demand Notice under Section 8 (1) of the IBC. No documents were furnished to the Operational Creditor regarding the Coal quality assessment report as mentioned in the order, whereas, the same was placed on record during the appeal filed before the NCLAT. On the basis of these facts, the Hon'ble NCLAT rejected the appeal stating that there was no pre-existing dispute in the case, since the matter of supply of low quality of goods were not raised with the Operational Creditor prior to the issue of the Demand Notice under Section 8 (1) Page 6CP (IB) No.105/BB/2023 of the IBC 2016. In this case also, the facts are same, in the sense that there are no documents brought on record to show that the goods having been supplied by the Operational Creditor were of substandard quality and such an issue was not raised by the Corporate Debtor prior to the issue of demand notice under section 8 (1) of the IBC. Accordingly, the claim of there being a pre-existing dispute in the case is not tenable.

8. The Petition has been filed on 25.05.2023, hence the Petition is well within the limitation, considering the Date of Default mentioned in Form No.5.

9. Accordingly, this adjudicating authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against the Corporate Debtor. Therefore, the instant Company Petition bearing CP (IB) No. 93/BB/2023 is admitted against the Corporate Debtor and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14 of the Code, the following prohibitions are imposed, which must be followed by all and sundry:

a. the institution of suits or continuation of pending suits or proceedings against the Project of Corporate Debtor including execution of any judgment, decree or order in
b. any court of law, tribunal, arbitration panel or other authority;
c. transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
d. any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
e. the recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
f. it is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
g. the provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
h. the order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under

sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

10. This bench appoints Mr. Balakrishnan Venkatachalam Registration No. IBBI/IPA-001/IP-P00229/2017-2018/10458, having registered address: 4C-420, 3rd Floor, Kempe Gowda Underpass Road, (5th Main), Ramamurthy Nagar, Bangalore, Karnataka, 590016, Contact No: 8095768000, e-mail:*cabalakrishnanip@gmail.com* as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15,17,18,19,20,21 of the IBC.

11. The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.

12. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

13. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-	**-Sd-**
(MANOJ KUMAR DUBEY) **MEMBER (TECHNICAL)**	**(K.BISWAL)** **MEMBER (JUDICIAL)**