



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

CP (IB) No.109/BB/2021
I.A 258 of 2022
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Ramesh Kumar Garg,
Proprietor of D.R. Garg Enterprises
Timber Merchants & Plywood Dealers,
Near Malgodown Road,
Uditnagar, Rourkela- 769 012

... Petitioner/Operational Creditor
Versus

M/s Buildmet Private Limited,
Registered Office at:
Survey No. 58/1, KKR Pearl,
Nagashetti Halli Kasaba Hobli,
Hebbal-Tumkur Outer Ring Road,
Bangalore – 560 001

... Respondent/Corporate Debtor

Order delivered on: 2nd March, 2023

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

PRESENT:

For the Petitioner : Sh. Rahul Agarwal

For the Respondent : Sh. Naman Jhabakh

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 Ramesh Kumar Garg, Proprietor of D.R Garg Enterprises (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate



Corporate Insolvency Resolution Process against M/s. Buildmet 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 1,38,80, 649/- (Rupees One Crore Thirty-Eight Lakh Eighty Thousand Six Hundred and Forty Nine Only) including the the Principal amount of Rs. 1,04,43,057/-. (Rupees One Crore Four Lakh Forty Three Thousand and Fifty Seven Only).

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 Petitioner is a Proprietorship registered under the GST on 01.07.2017 and engaged in the business of Warehouse/Depot, Retail Business and Wholesale business.
4. The respondent M/s Buildmet Private Limited is a Private Limited Company having date of incorporation on 11.06.1984 and engaged in the business of infrastructure construction.
5. It is submitted that the Operational Creditor has supplied Timber, Plywood, Flush Door and H/w Accessories against the purchase order received from the Corporate Debtor to be delivered to RCCPL Private Limited, Mukutban Village, Yavatmal Dist., Maharashtra & Wonder Cement Limited, Kherwas Village, Madhya Pradesh.
6. It is also stated that, as per the terms, the payment was to be made within 60 days from receipt of material and if the payment exceeds beyond 100 days the corporate debtor will be liable to pay 1.5% interest per month for outstanding amount.
7. The first invoice was issued to Corporate Debtor on 27.03.2019 and last invoice issued to Corporate Debtor on 08.01.2020. From, 08.01.2020 till 05.04.2021, repeated emails and reminders were sent to corporate debtor for clearing the outstanding dues.
8. It is submitted that the operational creditor has served demand notice in Form 3 to the Corporate Debtor on 05.04.2021 with Outstanding amount of Rs. 1,38,80,649 (including interest upto 31.03.2021). However, no reply was received from the Corporate Debtor nor any amount was repaid.



9. The Operational Creditor vide I.A 258/2022 preferred an application for suggesting the name of the IRP to be appointed in the present case if the petition is being admitted. Name of Mr. Rakesh Kumar Jain is suggested by the Petitioner.
10. The notice in the present case was issued on 22.11.2021. On 19.01.2022 the Learned Counsel for the respondent rendered appearance and sought time to file reply. However, on 15.03.2022 the counsel for the respondent submits matter has been settled between the parties and adjournment was sought by the Counsel for the petitioner for getting instruction. It is seen that repeated adjournments were sought on the basis of settlement talks proceedings. The respondent has not filed its reply to the present petition.
11. On 24.01.2023, the Learned Counsel for the Petitioner submits that the Principal amount has been fully paid after the Cheque for outstanding amount paid by the Respondent at Rs 14,43,057/- was cleared. This was not denied by the Petitioner. This Tribunal directed the Counsels for the Parties to file two page note with regard to the issue of pending interest within one week, on which the Petitioner's Counsel was insisting.
12. In compliance to the above direction the counsel for the Petitioner filed dy no. 727 dated 07.02.2023 interalia submitting that the Operational Creditor is a small proprietorship firm and has gone into extreme financial burden and harassment consequent to the actions of corporate debtor. It is also stated that the Operational creditor is also forgoing the interest from 01.04.2021 till date, i.e., around Rs. 34 Lakhs which was not claimed in Form- 5.
13. Further, the purchase order signed and delivered by corporate debtor to the operational creditor is itself a bilateral contract and also forms part of operational debt. An amount of Rs. 34,37,592/- is currently due from the corporate debtor.
14. The above mentioned compliance is taken on record by this Tribunal.
15. We have heard both parties and perused the records available.
16. It is observed that the Operational creditor has filed this present Petition for a claim of outstanding amount of Rs. 1,38,80,649/- out of



which Rs. 1,04,43,057/- (Rupees One Crore Four Lakh Forty Three Thousand and Fifty Seven Only) is the Principal amount. However vide diary No. 727 dated 07.02.2023 the Operational Creditor acknowledged that the Outstanding Principal amount of Rs. 1,04,43,057/- has been paid by the Corporate Debtor during the Pendency of this proceeding and before the admission of this application. And only an amount of Rs. 34,37,592/- as interest is yet to be paid.

17. At this juncture, it is pertinent to refer to the order of Hon'ble NCLAT Principal Bench, New Delhi in the case of "*Rohit Motawat v. Madhu Sharma*", *Comp. App.(AT) (Ins) No. 1152 of 2022, dated 03.02.2023*, wherein the Tribunal observes that " the Adjudicating Authority has erred in not looking into the facts that the principal amount has entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable as the spirit of the legislation of the Code is for 'resolution of debt' and not for recovery'."
18. In the light of the decision laid down in the order cited supra, this Tribunal hereby dismiss the Petition filed under section 9 of the IBC as not maintainable; since the Principal amount has entirely been paid during the pendency of the petition and the issue is only regarding to interest outstanding. According **CP (IB) No. 109/BB/2021** is **dismissed**. However, this order shall not preclude the petitioner from pursuing other remedies in accordance with law, if so advised. No order as to costs.
19. **I.A 258 of 2022** filed by the Operational Creditor for nomination of the IRP is **dismissed** as infructuous.

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-

(T. KRISHNAVALLI)
MEMBER (JUDICIAL)