

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 1027 of 2025

IN THE MATTER OF:

Haabia Resources Pvt. Ltd.

...Appellants

Versus

Vidyut Metallica Pvt. Ltd.

...Respondents

Present:

For Appellant : Mr. Ajit Anekar a/w Ms. Madhuri Negi, Advocates.

For Respondents : Mr. Gaurav Mitra, Mr. Rohan Dakshini, Ms. Shweta Jaydev, Ms. Anjula Bhansali, Mr. Anirudh Bhat, Ms. Lavanya Pathak, Mr. Nirmal Prasad, Mr. Aman Sadiwala and Ms. Abhyarthana Singh, Advocates.

O R D E R
(Hybrid Mode)

01.09.2025: Heard counsel for the Appellant.

2. This appeal has been filed against the order passed by Adjudicating Authority dated 21.03.2025 by which Section 9 application filed by the appellant has been rejected as barred by time. Adjudicating Authority in paragraph 5.3 has noted the facts that which states as follows:-

“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 The CD approached the Hon'ble Supreme Court but the appeal was withdrawn as recorded in the order of the Hon'ble Supreme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.”

3. Ld. Counsel for the appellant challenging the order submits that even though arbitral counsel has gave an award which became final on 11.03.2013 but Section 8 notice was given by the appellant on 01.12.2019 and the Section 9 application was filed on 03.03.2020 and hence it was well within time. It is submitted that limitation needs to be computed after expiry of 10 days of giving notice under Section 8 when amount is not paid and default is committed. He submits that present is a case where arbitral award has computed the amount of entitled.

4. We have considered the submission of the appellant and perused the records.

5. There is no dispute that the Arbitral Award which was given on 26.02.2011 by MSME, counsel which was challenged in the High Court and thereafter in the Hon'ble Supreme Court. Challenge in the Hon'ble Supreme Court was withdrawn on 11.03.2013 thus, arbitral award became operative and was to be complied with. When amount was not paid under the award the limitation for the operational creditor to take appropriate measures commenced. The submission of the appellant is that since he gave notice under Section 8 only in the year 2019 and the application filed in the year 2020 was after expiry of 10 days time hence the application was well within time. Submission needs consideration Section 8 and Section 9 which are relevant are as follows:-

“8. Insolvency resolution by operational creditor-

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the [payment] of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.”

“9. Application for initiation of corporate insolvency resolution process by operational creditor-

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor^{J1} may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt ¹[by the corporate debtor, if available;]

[(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.]

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority^{J3} shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no [payment] of the unpaid operational debt;

- (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*
- (d) no notice of dispute^{J6} has been received by the operational creditor or there is no record of dispute in the information utility; and*
- (e) there is no disciplinary proceeding pending⁴ against any resolution professional proposed under sub-section (4), if any.*
- (ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—*
 - (a) the application made under sub-section (2) is incomplete;*
 - (b) there has been ³[payment] of the unpaid operational debt;*
 - (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;*
 - (d) notice of dispute^{J6} has been received by the operational creditor or there is a record of dispute in the information utility; or*
 - (e) any disciplinary proceeding is pending⁴ against any proposed resolution professional:*

Provided that Adjudicating Authority, shall, before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.”

6. The expiry of period of 10 days for the date of delivery of notice for invoices are condition precedent for filing application Section 9 by virtue of Section 9(1) the said notice under Section 8 cannot be reason of computing the limitation for filing Section 9 application. Section 9 application has to be filed under Article 137 of the ‘Limitation Act’ within three years under the “Right to Sue Accrues”. The “Right to Sue Accrues” when the award in favour

of the appellant became final and operative. Section 8 notice cannot give any fresh period of limitation to the operational creditor to initiate proceeding which had become barred by time on the day when the notice under Section 8 notice was issued to the appellant. We thus are of the view that submission of the appellant that after giving notice under Section 8 the appellant shall be entitled for fresh period of limitation cannot be accepted. Adjudicating Authority has rightly held the application as barred by time in which we do not find any ground to interfere. The Appeal is dismissed accordingly.

7. We make it clear that the dismissal of Section 9 application shall not preclude the right of the appellant to proceed in accordance with law with respect to pending execution.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

harleen/NN