NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 2204 of 2024

[Arising out of the Order dated September 05, 2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench) in CP (IB) No.1133/MB/2023]

IN THE MATTER OF:

Shitanshu Bipin Vora
Suspended Director of Exclusive
Linen Fabrics Pvt. Ltd.
R/o 15-17 Floor, Plot No.595 C Mittal Gardenia
Dr. Baba Saheb Ambedkar Road
Matunga, Mumbai – 400019
Email: shashankpathakadvocate@gmail.com **...Appellant**

Versus

1. **Shree Hari Yarns Pvt. Ltd.**
   Gate No. A1/A-3, Behind M.S.E.B. Office
   Laxmi Process Road,
   Ichalkaranji - 416 115, Maharashtra
   Email: accounts@shrihari.co.in **...Respondent No. 1**

2. **Mr. Rajan Garg**
   Interim Resolution Professional of
   Exclusive Linen Fabrics Pvt. Ltd.
   Flat No. 202, Wing B, 2nd Floor,
   Safal Twins, Block Punjabwadi,
   Sion Trombay Road, Deonar,
   Mumbai Subarban, Maharashtra – 400088
   Email: fcaranjangarg@gmail.com **...Respondent No. 2**

Present:

For Appellant : Mr. Karan Grover, Advocate

For Respondent : Mr. Govind Manoharan, Ms. Poorva Garg, Mr. Akshay Sinha, Mr. Tenzing Bhutia and Mr. Saswat Pattnaik, Advocates.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The instant Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016, is impugning the Order dated 05.09.2024 as passed by the Ld.

National Company Law Tribunal, Mumbai Bench, in C.P. (IB) No. 1133/MB/2023 ('Ld. Adjudicating Authority'), thereby initiating the Corporate Insolvency Resolution Proceedings ('CIRP') against Corporate Debtor-Exclusive Linen Fabrics Pvt. Ltd. The Appellant herein is the suspended Director of the Corporate Debtor. The Impugned Order has been passed by the Ld. Adjudicating Authority on an Application filed by the Respondent No.1-Shree Hari Yarns Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code'), alleging a default of an amount of ₹1,29,08,449/- on the part of the Corporate Debtor.

Submissions of the Appellant:

2. The Respondent No.1 in its application has alleged that a principal amount of ₹88.16.301/- and an interest of an amount of ₹40,92,148/-, is outstanding from the Corporate Debtor. However, it is an admitted fact that there is no agreement between parties which can demonstrate the consensus of the Corporate Debtor regarding levy of interest on delayed payment, if any. The Adjudicating Authority has relied on payment of interest paid in February 2021 and June 2021. Even the invoices say interest @ 18% without saying per annum or per month or any other period. So the time period is indefinite. the date of default has been arrived at. No document has been produced by the Respondent No.1 substantiating the days in which payment was to be made. Code does not provide the AA with the power to interpret a document as in the instant case the AA Authority has gone ahead to interpret the alleged delayed interest clause from '18%' to '18% per annum'.

3. Rs. 88 lakhs have been paid by the Appellant before NCLAT. There is no contract or agreement for payment of interest for delayed payment. The date of default has been taken as 08.05.2021. This was done behind his back as the order was reserved on 06.08.2024 (at page 206). The matter was again listed on 30.08.2024 for seeking clarification on the ground of date of default and the matter was adjourned to 03.09.2024. On 03.09.2024 Additional Affidavit filed by Operational Creditor was taken on record and orders were reserved. The orders were pronounced on 05.09.2024. The Appellant argues that no debt is due and payable by the Corporate Debtor and that the alleged default includes an arbitrary interest component of ₹40,92,148/-, in the absence of any agreement permitting such interest. It is submitted that the Respondent No-1 has sought an interest of ₹40,92,148/- towards interest for delayed interest at 18%. However, the Respondent No-1 while raising its invoices added the interest component without any discussion with the Appellant. There was no agreement between the Appellant and the Respondent No-1 with regard to the interest component and as such the Respondent No-1 has arbitrarily added the interest amounts and claimed the aforesaid amount, which is not maintainable, as no interest terms were agreed upon between the parties.

4. The Respondent No. l in, order to reach the threshold of Rs l crore, as provided under Section 4 of the Code, has included a mammoth of interest amounting to ₹40,92,148/-, thereby making the alleged default amount as ₹1,29,08,449/-. The principal amount claimed, Rs 88,16,301/-, falls below

the Rs 1 crore threshold required under Section 4 of the IBC, rendering the Application non-maintainable. Further, the Appellant alleges a violation of natural justice, stating that after reserving the Order on 06.08.2024, the Adjudicating Authority listed the matter again on 30.08.2024 without intimation to the Corporate Debtor. The Operational Creditor was permitted to file an Additional Affidavit, and a subsequent hearing took place on 03.09.2024 without notifying the Corporate Debtor. The Tribunal proceeded to pass the Impugned Order on 05.09.2024 without allowing the Corporate Debtor an opportunity to rebut the Additional Affidavit or advance arguments. The Appellant also contends that the date of default cited in the Additional Affidavit, 08.05.2021, is incorrect, as it does not consider a payment made on 02.06.2021. The Respondent has failed to substantiate how the default date was determined, and the Tribunal overlooked these deficiencies while passing the Impugned Order. Accordingly, the Appeal has been filed, challenging the initiation of CIRP on the grounds of maintainability, procedural irregularities, and violation of natural justice.

5. The Impugned Order does not take into consideration that the Code provides for definition of the term operational debt under Section 5 (21), wherein 'interest' has not been specifically mentioned as a part of the debt, unlike in the definition of financial debt provided under Section 5 (8) of Code, wherein the legislation has expressly included the term 'interest' to be a part of the debt, that can form a part of the claim against the Corporate Debtor. This deliberate difference in the language used for both terms by the

legislation, clearly provides that interest could not have been accepted by the Adjudicating Authority as a part of the default amount as claimed by the Respondent No 1.

6. The term 'debt' under the Code does not include interest on operational debt unless the parties specifically agreed on a rate of interest to be payable on any delayed payment. The claim on account of interest on unpaid invoices is not sustainable since the parties never agreed on levy of any interest and therefore the Applicant's claim for the same is untenable. Pertinently, the Applicant has not furnished any contract between the parties to substantiate its claim for interest.

7. Admittedly, there is no agreement between the parties for levy of any interest on delayed payment. The Impugned Order is against the law laid down by this Appellate Tribunal in

- ***Mr Maulik Kiritbhai Shah vs United Telecoms Ltd [Company Appeal (AT) (CH) (Ins) No. 268/2023],*** decided on 15.09.2023,
- ***Rohit Motawat vs Madhu Sharma, Proprietor Hind Chem Corporation and Anr [CA (AT) (Ins) No. 1152 of 2022],*** decided on 03.02.2023,
- ***Swastik Enterprises vs Gammon India Limited [Company Appeal (AT) (Insolvency) No. 144, 145, 146, 147 and 148 of 2018],***

- ***SS Polymers vs Kanodia Technoplast Limited [Company Appeal (AT) (Insolvency) No. 1227 of 2019],***
- ***Krishna Enterprises Vs. Kanodia Technoplast Limited [2019 SCC OnLine 1310]***

In all these, it has been specifically held that interest, unless otherwise agreed, cannot form part of the operational debt.

8. The invoices issued by Respondent No.1 annexed as A/12 to A/29 do not provide for term intervals in which interest has to be paid. The invoices are having vague terms which were never accepted by the Appellant. The Appellant never agreed for any interest to be paid. The present Petition is not maintainable as if ₹40,92,148/- is reduced from the total claimed amount of ₹1,29,08,449/-, then the amount of claim will be below Rs 1 crore, which, as per notification SO 1205 (E) dated 24.03.2020, issued by the Ministry of Corporate Affairs, is the pecuniary jurisdiction of this Tribunal. As such, this Petition deserves to be rejected.

9. The interest clause in the invoice is a generic clause contained in the invoices by default, which was unilateral in nature and also not specific. The interest clause is vague in nature and not agreed by the Appellant.

10. The Respondent No-1 is attempting to misuse the provisions of the Code to initiate CIRP against the Respondent, which is a healthy and solvent company and is regularly meeting all its debt obligations. This clearly runs

contrary to the object and purpose of the Code, which mandates reorganisation of the Corporate Debtor and maximisation of its assets.

11. The appellant has relied upon the judgement of this Appellate Tribunal in ***Binani Industries Limited vs. Bank of Baroda in 2018 SCC OnLine NCLAT 521*** where it was held that the first order objective of the Code is resolution. The second order objective is maximisation of value of assets of the firm and the third order objective is to promote entrepreneurship, availability of credit and to balance the interests of the stakeholders.

12. The focus on maximising the value of the Debtor's assets was further reiterated in ***Swiss Ribbons Pvt Ltd vs Union of India in (2019) 4 SCC 17.*** Thus, the Respondent No-1 has only turned a blind eye to the existing issues between the parties and made misleading submissions before this Tribunal to seek recovery through provisions of the Code, and such an Application seeking insolvency of the Appellant under Section 9 of the Code is in respect of the invoices when there are material pre-existing disputes, is not permitted. Thus, the Respondent No-1 is simply trying to use the resolution proceedings under the Code as a recovery tool, which is against the basic objectives sought to be achieved under the code.

13. Appellant also relies upon the judgements of Hon'ble Apex Court in ***Transmission Corporation of Andhra Pradesh Limited vs Equipment Conductors and Cables Limited in (2018) SCC OnLine SC 2113, and Mobilox Innovations (supra), M/S SS Engineers vs Hindustan Petroleum Corporation Ltd and Ors in 2022 SCC OnLine SC 1385*** wherein it was

held that the Code is not intended to be a substitute to a recovery forum and the object of the Code is efficient resolution of corporate debtor and to bring the company out of distress.

14. In light of the dispute in respect of the alleged sums payable, the instant Application filed by the Applicant under the Code is not maintainable, and the Application has been filed with an ulterior motive to extort payments from the Respondent disregarding the grave issues pertaining to the quality of the supplies and losses suffered by the Respondent on account of it. Further, Section 65 of the Code clearly lays down the penal consequence for any person initiating CIRP fraudulently or with malicious intent for any purpose other than for resolution of insolvency. Courts and Tribunals have consistently held that where a Petition if filed collusively and not with the purpose of achieving resolution, then despite fulfilling all the conditions of the Code, this Tribunal can exercise its discretion in rejecting the Application by relying upon Section 65 of the Code, to avoid and protect the company from being dragged into CIRP in a mala fide manner. It has also been held that initiating CIRP against a company only with an intention to recover dues, is against the very spirit and purpose of the Code. Such recovery proceedings fall within the scope and ambit of words "for any purpose other than for the resolution" as defined under Section 65 of the Code.

15. The Respondent No 1 has malafidely concealed the cash discount offered by it from time to time and, lastly, on 31.03.2021, which clearly

demonstrates that the Respondent No 1 admitted issue of quantity and quality of yarn material supplied by it.

16. The Adjudicating Authority was wrong in taking into consideration the debit note, dated 11.09.2023, which was a document prepared by the Respondent No 1 itself and ought not to have been considered relevant for adjudication of the instant case.

17. The Adjudicating Authority ought to have dismissed the Application filed by the Respondent No 1 under Section 9 of the Code in the absence of a clear date of default in the Application. After the conclusion of final arguments and reserving the matter for final order on 06.08.2024, the Adjudicating Authority was wrong in de-reserving the matter on 30.08.2024 at the request of the Respondent No 1 and in the absence of Corporate Debtor. The Adjudicating Authority was further wrong in providing an opportunity to the Respondent No. 1 to file an Additional Affidavit and that too without providing due opportunity to the Corporate Debtor to rebut the contentions raised therein. The Adjudicating Authority did not take into consideration the fact that the date of default could not have been 08.05.2021, as the Corporate Debtor has also made payment on 02.06.2021, a fact which was concealed by the Respondent No 1.

18. The Adjudicating Authority ought to have taken into consideration the fact that no affidavit under Section 65 B of the Indian Evidence Act was filed by the Respondent No 1 supporting the electronic record filed along with the

Application. The Adjudicating Authority ought to have appreciated that the proceedings initiated by the Respondent No 1 before the Adjudicating Authority were sole for recovery of its alleged dues and were, thus, an abuse to the process provided under the Code.

19. The Respondent No 1 has sought initiation of Corporate Insolvency Resolution Process against Corporate Debtor in order to arm twist the Corporate Debtor in paying monies which are otherwise not due and payable. By way of this Application, Respondent No-1 is simply attempting to abuse the process prescribed under the Code in order to initiate Corporate Insolvency Resolution Process (CIRP) against a healthy and solvent company. It is nothing but a mere desperate attempt on the part of the Respondent No-1 to coerce payment (that is, as a recovery of its alleged dues) by seeking to initiate CIRP, which runs counter to the objective, spirit, and purpose of the Code.

20. The application should have been dismissed owing to the inherent nature of inadequacies and false information it contains, inter alia on the following grounds as summarised below:

(a) The Applicant is not entitled to claim interest on the alleged unpaid invoice amounts as the same was never agreed to between the parties.
(b) The rate of interest in the terms has no time interval mentioned in the invoices annexed by the Applicant in this Petition.

(c) Initiation of CIRP will defeat the object and purpose of the Code which is aimed at resolution and value maximisation.

Submissions of the Respondent

21. Appellant has never disputed the outstanding claim amount and the Invoices nor disputed any of the following demand notice/letters/emails sent to Appellant:

(i) Letters dated 8.08.2023, 16.08.2023 and 30.08.2023;

(ii) Emails dated 31.08.2023, 22.08.2023, 17.08.2023, 9.08.2023, 31.07.2023, 24.07.2023, 17.07.2023, 4.07.2023, 26.06.2023, 19.06.2023, 12.06.2023, 6.06.2023, 16.05.2023, 21.03.2023, 13.03.2023, 8.03.2023, 27.02.2023, 14.02.2023, 7.02.2023, 2.02.2023, 20.06.2022, 30.05.2022, 23.05.2022, 16.05.2022, 7.05.2022, 2.05.2022, 25.04.2022, 18.04.2022, 11.04.2022;

(iii) Statutory Demand Notice dated 18.9.2023 without annexures.

22. Respondent No.1 has been supplying yarn as an agent to Appellant since November 2020. The total value of yarn supplied by Respondent No.1 is ₹5,14,14,078/- as against 58 invoices in total. Appellant has always been well aware of the terms and conditions mentioned in the invoices. Whenever Appellant paid in advance, Respondent No.1 issued cash discount [Ex. C/Pg 16 of Reply] towards those invoices as an incentive for making advance payment. Likewise, if Appellant delayed in making payment, then as per unambiguous terms of invoice, Respondent No.1 levied interest which was paid by Appellant.

23. Appellant for the first time before the NCLT contended that there is no agreement towards interest. All the 18 invoices contain an interest clause which were accepted without demur. Appellant paid interest and deposited TDS in the past on the Debit Notes issued by Respondent No.1, which entries can be seen in Respondent No.1's ledger. All invoices are sent on the same day the yarn is supplied.

24. Appellant has also never raised any dispute with respect to quantity or quality of yarn supplied by Respondent No.1 as an agent.

25. In the present matter, Respondent No.1 supplied yarn under 18 invoices to Appellant from 9.03.2021 to 13.04.2021. Appellant has not annexed to Appeal, the Additional Affidavit dated 9.05.2024 filed by Respondent No.1 before NCLT which reflects the working statement [Annexure A-1/Pg. 51-Impugned Order]. Annexure 5 to CP inadvertently mentioned identical amounts for "Principal Amount" and "Due Principal Amount". There was no change in the claim amount. Appellant has not disputed the working statement.

26. It is clearly stipulated in all the 18 invoices that interest is payable at 18% p.a. on delayed payment, which terms and conditions have never been disputed by Appellant. In fact, in the past, Appellant has paid interest to Respondent No.1 on delayed payments. Not only has Appellant paid interest but also deposited TDS on interest in terms of Section 194A of the IT Act, 1961. The interest paid, Debit Notes raised by Respondent No-1 [Ex. B/Pg 14-

15 of Reply] and TDS deposited by Appellant [Ex. A/Pg 12-13 of Reply] can be seen below as well as in the ledger of R1 at Pg 96 &102:

Sr. No.	Interest due (incl. GST)	Interest paid	TDS deposited by Appellant	Debit Note No	Invoice No.	Date of payment of interest	Relevant Page of Appeal
1.	6,212	5,768	444 [Pg. 12-Reply]	Bd-489 [Pg. 14-Reply]	4367	4.2.2021	96
2.	10,365	9,376	988 [Pg. 13-Reply]	Bd-75 [Pg. 15-Reply]	5281, 6638, 6902, 7403	2.6.2021	102
Total	16,577	15,144	1,432				

[Pages 12 to 16 (Exhibits A, B & C) were not produced before the NCLT.]

27. The above Appeal ought to be dismissed due to the following reasons:

(i) Appeal is time barred. The Impugned Order was pronounced on 5.09.2024 (uploaded on 6.09.2024). The Appellant applied for certified copy on 29.09.2024 i.e. after a delay of 24 days from 5.09.2024 and filed Appeal on 8.10.2024. There is an unexplained delay in filing the Appeal and the same should not be condoned.

(ii) Appellant has paid interest on delayed payments in the past.

(iii) There is a debt and default by the Appellant of Rs. 1,29,08,449/-

(iv) No dispute has been raised at any time with respect to the yarn supplied or any invoices raised by R1 even before the Hon'ble NCLT.

(v) Appellant has not replied to the statutory Demand Notice dated 18.09.2023.

(vi) Appellant for the first time before the NCLT falsely contended that there is no agreement between the parties towards interest.

(vii) After the Hon'ble NCLT heard both the parties, the matter was reserved for orders on 6.08.2024. Thereafter the matter was listed on 30.08.2024 before the Hon'ble NCLT for clarification on last date of default. Additional Affidavit dated 30.08.2024 specifying the last date of default 08.05.2021 for the last invoice, was served upon Appellant's Advocate on the same day. No grievance was raised by Appellant. The matter was then listed on 3.09.2024 for further consideration when the NCLT perused Addl. Affidavit and took the same on record and once again reserved CP for orders. On 5.09.2024, CP was listed for pronouncement of orders. There is no such practice that an Advocate who is on record and has filed vakalatnama should be informed about the listing of the matter by the Hon'ble NCLT or by R1/Orig. Petitioner. Once an Advocate has entered appearance, he/she has to keep a watch on the causelist.

(viii) Appellant chose not to appear on 30.08.2024, 3.09.2024 and 5.09.2024 before NCLT and has now raised frivolous grounds and unfounded allegations against NCLT and Respondent No.1.

28. The judgments relied upon by Appellant do not apply to the facts of the present case and are distinguishable. In the present case, Respondent No.1 has claimed both principal and interest, which has never been disputed by Appellant.

29. Respondent relies upon the judgment of Hon'ble High Court of Bombay in the matter of ***Jatin Koticha v. VFC Industries, [(2007) SCC OnLine***

1092], wherein it was held that where invoices form the written contract between parties, specific stipulations which form a part of the invoice must be complied with. The Appellant was thus obligated to pay interest at 18% on delayed payments as had been done in the past.

30. Respondent No.1 also relies upon the judgement of this Appellate Tribunal in the matter of ***Mr. Prashant Agarwal, member of suspended board of Bombay Rayon Fashions Ltd. v. Vikesh Parasrampuria & Anr. in Company Appeal (AT) (Ins) No. 690 of 2022*** where it was held that "since interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for "right to payment" (Section 3(6) IBC) and therefore will form part of "debt" (Section 3(11) IBC)."

31. In absence of any pre-existing dispute, Hon'ble NCLT has rightly concluded that there exists an operational debt and default in terms of IBC and passed the Impugned Order. The Appeal and the IAs filed thereunder ought to be dismissed with costs.

Appraisal

32. Heard Learned Counsels for both sides and also perused the material on record. The Respondent had raised the issue that the Appeal is time barred and is not maintainable. It is to be noted that condonation of delay was allowed by this Tribunal as prayed for in IA 8261 of 2024 in the orders dated 27.02.2025.

33. The main issue before us is whether Section 9 Application can be accepted on the basis of invoices having total amount claimed as operational

debt with interest component which is arrived based on a condition contained in the invoices for delayed payment.

34. The Appellant has raised some technical issues relating to rehearing the matter after it was reserved for final order on 06.08.2024. We have gone through the details of the proceedings. The Adjudicating Authority wanted some clarifications with respect to the date of default, which was done in the open Court and we don't find any infirmity in the procedure. The Respondent was informed about this hearing but he chose not to appear on those dates and there is no prejudice caused to the Appellant on this basis and therefore the claim of the Appellant that he has suffered from lack of natural justice cannot be accepted.

35. In these proceedings CIRP was based on the application filed under Section 9 of the IBC, which alleges that the Corporate Debtor has defaulted on a payment of ₹1,29,08,449/-. The Appellant disputes this amount and claims it is inflated by unsubstantiated interest charges, including the principal amount of ₹88,16,301/- and an interest of ₹40,92,148. Briefly speaking, The Appellant claims that the impugned order was based on a frivolous application filed by Respondent No.1. According to the Appellant, there is no agreement between the parties for the levy of interest, and the claim of interest is unjustified. Additionally, the principal amount falls below the threshold of ₹1 crore, which is required for initiating CIRP under Section 4 of the IBC. The Appellant contends that the Respondent inflated the claim by including an excessive interest component to meet the threshold. Further,

the Appellant challenges the procedural aspects of the NCLT proceedings. On 06.08.2024, the NCLT reserved its order after hearing both parties, but without fixing any date for pronouncement. The Tribunal then listed the matter on 30.08.2024 without informing the Corporate Debtor or its counsel. On 30.08.2024, Respondent No.1 filed an additional affidavit without proper intimation, and the Tribunal considered it on 03.09.2024 in the absence of the Corporate Debtor. The Appellant claims that this was a violation of natural justice, as the Corporate Debtor was not given an opportunity to respond to the new affidavit or the new grounds being introduced. The final order of the Tribunal on 05.09.2024 initiated the CIRP despite the Appellant's objections.

36. Briefly speaking the main arguments presented by the Respondent No.1 are that the Corporate Debtor defaulted on the payment of ₹1,29,08,449/-, which includes ₹88,16,301/- as principal and ₹40,92,148/- as interest. This claim is based on unpaid dues for materials supplied to the Corporate Debtor. The Respondent argues that the NCLT acted correctly in initiating CIRP under Section 9 of the IBC and that the additional affidavit filed on 30.08.2024 was within procedural guidelines. The Corporate Debtor was given adequate opportunity to respond, and their failure to do so should not invalidate the process. The date of default is correctly stated as 08.05.2021, and there is no obligation on their part to account for any payments made by the Corporate Debtor without proper documentation or acknowledgment.

37. Before entering into the merit of the payment of interest in Section 9 proceeding, we may look into the definition of operational debt and the financial debt as provided in the Code. Financial debt is mentioned in Section 5(8) of IBC, which states as follows:

> "....
> **(8) "financial debt"** means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-
> (a) money borrowed against the payment of interest;
> ....."

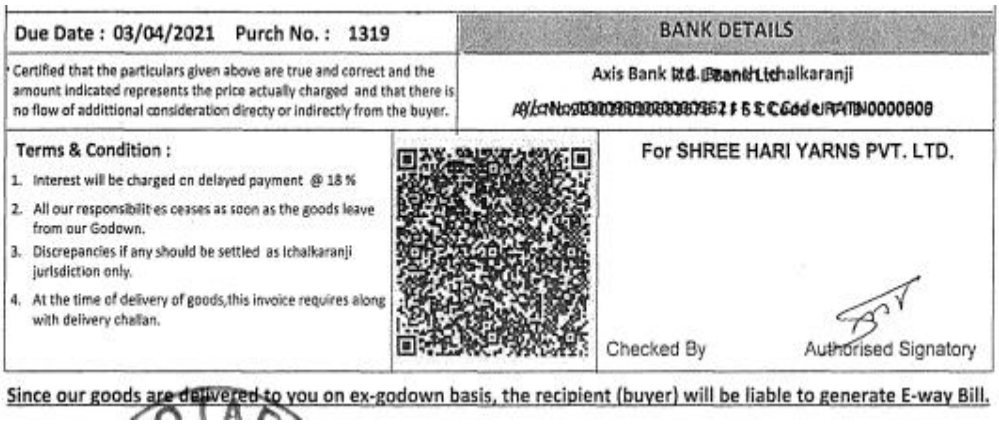
This definition clearly brings out that financial debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money. On the other hand, the definition of the operational debt doesn't include interest in it, which is extracted as below:

> "5(21) "Operational debt" means a claim in respect of the provision of goods a services including employment or a debt in respect of [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

We note that the Code defines the term operational debt under Section 5 (21), wherein 'interest' has not been specifically mentioned as a part of the debt, unlike in the definition of financial debt provided under Section 5 (8) of Code, wherein the legislation has expressly included the term 'interest' to be a part of the debt, that can form a part of the claim against the Corporate Debtor. This deliberate difference in the language used for both terms by the legislation, clearly provides that interest could not have been accepted by the Adjudicating Authority as a part of the default amount as claimed by the Respondent No 1. We note that there is an explicit mention of interest in financial debt but such a provision does not exist for operational debt.

Accordingly, the interest can be claimed only if there is an explicit agreement or contract between the parties.

38. In the present case the Section 9 Application against the Corporate Debtor - Exclusive Linen Fabrics Pvt Ltd. was admitted on 05.09.2024 on the Application of the Respondent No.1 - Shree Hari Yarns Pvt. Ltd. – Operational Creditor. The Operational Creditor had claimed a demand of ₹1,29,08,449/- which consisted principal amount of ₹88,16,301/- and an interest component of ₹40,92,148/-. From the material on record, we find that Respondent No.1 was claiming an interest of ₹40,92,148/- relying upon a condition in the invoices as raised by the Respondent No.1- Operational Creditor. Before we proceed further, we extract the condition relating to the interest in one of the invoices at page 134 of the APB as below:



Due Date : 03/04/2021 Purch No. : 1319	BANK DETAILS
Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and that there is no flow of additional consideration directy or indirectly from the buyer.	Axis Bank Ltd. Branch Ichalkaranji

Terms & Condition :

1. Interest will be charged on delayed payment @ 18 %
2. All our responsibilit es ceases as soon as the goods leave from our Godown.
3. Discrepancies if any should be settled as Ichalkaranji jurisdiction only.
4. At the time of delivery of goods,this invoice requires along with delivery challan.

For SHREE HARI YARNS PVT. LTD.

Checked By Authorised Signatory

Since our goods are delivered to you on ex-godown basis, the recipient (buyer) will be liable to generate E-way Bill.

From the perusal of the condition as contained in a typical invoice placed on record, we extract this condition of interest: "*interest will be charged on delayed payment @ 18%*". This clause of interest doesn't specify after how many days delayed payment interest is to be charged and on whether per annum or per month or any other period. We find that this clause is non-

specific as the time period is indefinite basis which the date of default has been arrived at. So, we are inclined to agree with the contention of the Appellant that this is a vague statement. Furthermore, there is no agreement on record between the parties, which can demonstrate the justification regarding levy of interest on delayed payment, if any. Without any explicit agreement between the parties regarding levy of interest on delayed payment, just relying on a vague statement does not make it a contractual obligation. The claim of the Respondent that in all the 18 invoices (page no. 134 to 174 APB) interest is payable @ 18% per annum on delayed payment is stipulated. This fact is not borne out from the material on records as we have noted in earlier paragraph that the clause relating to interest payment is a vague statement.

39. Therefore, the arguments of the Respondent that the Appellant is liable to pay the interest as calculated by them on delayed payment do not commend us.

40. Specifically, in the facts of the case, if we exclude the interest amount of ₹40,92,148/-, the default amount of ₹1,29,08,449/- becomes just the principal amount of ₹88,16,301/-, which falls below the Rs 1 crore threshold as required under Section 4 of the IBC, rendering the Application non-maintainable.

41. The Adjudicating Authority has relied on payment of interest paid in February 2021 and June 2021. However, no document has been produced

by the Respondent No.1 substantiating the days in which payment was to be made. The Adjudicating Authority has not delved into the issue of the payment of interest with respect to the operational debt as defined in the code and has relied on the invoices which contains an interest clause of 18% on account of delayed payment. We find that the Respondent No 1 is relying upon the unilaterally formulated condition regarding charging of interest, when no such agreement exists between the parties. Furthermore, the delayed interest clause being relied upon by the Respondent No1 is non-specific and vague as the same does not state the period for the rate of interest as alleged in the invoice. We also agree with the contention of the Appellant that the Code does not provide the Adjudicating Authority with the power to interpret a document as in the instant case the Adjudicating Authority has gone ahead to interpret the alleged delayed interest clause from "18%" to "18% per annum". We are inclined to agree with the argument of the Appellant that the Code does not provide the AA with the power to interpret a document as in the facts and circumstances of the case. In the absence of any agreement between the parties, the calculation of interest cannot be agreed by us and the claim with respect to interest on pending invoices is not sustainable.

42. Therefore, the arguments of the Respondent that the Appellant is liable to pay the interest as calculated by them on delayed payment do not commend us.

43. The Respondent has mainly relied on the judgment of Hon'ble Bombay High Court in ***Jatin Koticha Vs Vfc Industries Pvt. Ltd. 2008(2) BOM CR155 decided on 13 December, 2007***. The relevant extract of which is as follows:

> "....
>
> 5. Now it is clear that there is no written contract signed by both the parties relied on by the plaintiff. It is not the requirement of the law that it should be a written contract signed by both the parties. What is necessary is that the suit should be based on a written contract. That, one can find in this case, in the form of invoices which were raised on the defendants along with delivery of the goods in pursuance of each purchase order. The invoices, as stated above, contained the terms and conditions. There is a clear parole acceptance of the invoice on the part of the defendants. The defendants accepted delivery of the goods along with the invoice without any demur or suggestion that they do not accept any of the terms whether pertaining to the rate, price, quantity etc. It makes no difference therefore that the invoices are not signed by both the parties. I am of view that the invoices must be treated as a written contract and the suit based on such invoices is a suit based on the written contract. This view is fortified by the Madras High Court reported in The Madras Law Journal Reports 1988 page 187 (Lucky Electrical Stores, by partner Mahendra Kumar Shah and Anr. v. Ramesh Steel House by Partner Babulal 1988 ML.J.R. 187, where the Chief Justice M.N. Chandurkar, rejected the contention similar to the one applied by the defendants in this case."
>
> ***[emphasis supplied]***

The above judgment relates to a summary suit for recovery of some amount, wherein it was held that there is no requirement of the law that it should be a written contract signed by both the parties and the invoices can be the basis for a party to charge interest. But the matter in hand relates to Insolvency

and Bankruptcy Code, which differentiates between the operational debt and financial debt, as has been discussed in the earlier part of the judgment. The definition of operational debt does not include the interest. On the other hand, the financial debt includes interest, if any. The judgment quoted by the Respondent No.1 is not relevant in the facts and circumstances of the present case as in this case the claim of the interest is being disputed as the clause relating to payment of interest is non-specific, vague and subject to multiple interpretations and cannot be relied upon without explicit contract or understanding between the parties.

44. It is argued by the Respondent No.1 that interest has been paid by the Appellant for delayed payments. Not only that but also TDS on interest in terms of the Section 194A of IT Act 1961 was paid by the Appellant. Per contra, it is the contention of the Appellant that Respondent No.1 supplied material to the Corporate Debtor, which went through thorough quality check and the Respondent No.1 was intimated about the shortfall and quality issues with the yarn material supplied by it. It is also claimed that the Respondent No.1 used to issue various credit notes in the form of cash discount to the Corporate Debtor for the shortfall and degraded quality yarn supplied by it. It is also claimed that as the quality check of the yarn material took considerable time and only after the same was concluded that the payment was made by the Corporate Debtor to the Respondent No.1. However, no interest was demanded by the Respondent No.1 in the past and also no evidence has been placed on record by the Respondent No.1 to show

that interest was demanded by the Respondent No.1 in the past. It is also claimed by the Appellant that Respondent No.1 has concealed the cash discount offered by it from time to time and lastly on 31.03.2021, which is claimed to be due to issues with the quality and quantity of yarn material supplied by it. We are, therefore, inclined to agree with the submissions to the extent that this hints a plausible pre-existing dispute. Another contention of the Appellant which hints of a plausible pre-existing dispute is that the argument of the Respondent No.1, which was not pleaded before the Ld. Adjudicating Authority, that the payment made by the Corporate Debtor on 02.06.2021, for a meagre amount of ₹9,376/-, was made by the Corporate Debtor towards interest, was not towards interest as no intimation was sent by the Corporate Debtor along with payment specifying that the said payment was towards interest nor was there any specific demand of interest of Rs.9,376/- by the Respondent No.1, against which the Corporate Debtor made that specific payment. We also note the argument of the Appellant that the payment made by the Corporate Debtor on 02.06.2021 is towards interest, cannot be accepted as the said payment is claimed to be concealed by the Respondent No.1 in their Application under Section 9 of the Code and thus, the Respondent No.1 now cannot take advantage of the same payment to assert its argument on interest component. So, we find that basis this payment, it cannot be concluded that there is an existing arrangement and understanding alluding to a contract as claimed by the Respondent No.1.

45. In the facts of the case, we are therefore, inclined to note that there is pre-existing dispute with respect to the claim of interest and on the basis of judgment of Hon'ble Supreme Court in ***Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd cited as 2018 (1) SCC 353*** and also in ***S. S. Engineers v Hindustan Petroleum Corporation Ltd. & Ors., Civil Appeal No. 4583 of 2022 and Tottempudi Salalith vs State Bank of India & Ors. Civil Appeal No.2348 of 2021***, the Impugned Order cannot be sustained.

46. The Respondent has also relied upon the judgment of this Tribunal in ***Prashant Agarwal Vs Vikash Parasrampuria & Anr. in Company Appeal (AT) (Ins) No. 690 of 2022 decided on 15.07.2022***, wherein this Tribunal has held that the total amount which includes both principal debt and interest on delayed payment as was stipulated in the invoices itself will become the total debt outstanding as per the requirements of Section 4 IBC in a Section 9 Application. The facts of each case are different. We note contrasting judgments relied upon by the Respondent. The Appellant has relied upon the judgment of this Tribunal in ***Rishabh Infra Through Hari Mohan Gupta Vs. Sadbhav Engineering Ltd in Company Appeal (AT) (Insolvency) No. 1881 of 2024 decided on 04.11.2024***, wherein this Tribunal has held that in the view that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the

obligation for interest at para 9. On this basis, this Tribunal has not accepted claim of the Operational Creditor for claiming interest in a Section 9 Application filed by the Operational Creditor.

47. Similarly, the Appellate Tribunal in the case of ***SS Polymers vs Kanodia Technoplast Limited,*** had held that relying on the invoices to raise claims for payment of interest is against the principle of the Code. Relevant extracts from this judgment are reproduced hereinbelow:

> "4. The Learned Counsel for the Appellant relied on 'invoices' to suggest that in the 'invoices,' the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'.
>
> 5. Admittedly, before the admission of an application under Section 9 of the Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which is barred in view of Section 65 of the Code."
>
> ***[emphasis supplied]***

Therefore, in the absence of any agreement between parties, regarding payment of interest on delayed payment, the claim with respect to interest on pending invoices is not sustainable, and on this ground the captioned Application is liable to be dismissed.

48. The Appellant has relied upon the judgments of this Appellate Tribunal in ***Krishna Enterprises vs. Gammon India Ltd [supra]*** wherein vide order dated 27.07.2018 it was held that 'debt' in terms of the Code does not include interest, unless payable in terms of any agreement among parties. The relevant extract of the judgment passed by the Appellate Tribunal is reproduced below:

> "4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principle amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor."
>
> ***[emphasis supplied]***

49. It is also contended that the Respondent is attempting to misuse the provisions of the code to initiate CIRP against the Appellant, which is a healthy and insolvent company and is regularly meeting all its obligation. In its support the Appellant has relied on various judgments wherein it has been held that the primary objective of the code is resolution and not recovery. Some of these are extracted as below:

49.1 ***Binani Industries Limited vs Bank of Baroda (supra)*** wherein it was held that the first order objective of the Code is resolution. The second order objective is maximisation of value of assets of the firm and the third order objective is to promote entrepreneurship, availability of credit and to balance the interests of the stakeholders. The relevant extracts of the judgment are reproduced below:

"2. The objective of the 'I & B Code' is Resolution. The Purpose of Resolution is for maximisation of value of assets of the 'Corporate Debtor' and thereby for all creditors. It is not maximisation of value for a 'stakeholder' or 'a set of stakeholders' such as Creditors and to promote entrepreneurship, availability of credit and balance the interests. The first order objective is "resolution." The second order objective is "maximisation of value of assets of the 'Corporate Debtor' and the third order objective is 'promoting entrepreneurship, availability of credit and balancing the interests.' This order of objective is sacrosanct."

[emphasis supplied]

49.2 ***Swiss Ribbons Pvt Ltd vs Union of India (supra):*** The focus on maximising the value of the Debtor's assets was further reiterated wherein the Supreme Court recorded the following observations:

"..As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is affected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme - workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment."

[emphasis supplied]

49.3 ***M/s SS Engineers vs Hindustan Petroleum Corporation Ltd and Ors (supra)*** wherein it was held that:

> "31. The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor."
>
> ***[emphasis supplied]***

49.4 ***Transmission Corporation of Andhra Pradesh Limited vs Equipment Conductors and Cables Limited, and Mobilox Innovations (supra):*** Hon'ble Supreme Court has held that the Code is not intended to be a substitute to a recovery forum and the object of the Code is efficient resolution of corporate debtor and to bring the company out of distress.

50. Further we are also inclined to agree with the submission of the Appellant that IBC aims at resolution and not recovery and cannot be used to push a healthy and solvent company into CIRP. The appeal of the Respondent No 1 clearly runs contrary to the object and purpose of the Code, which mandates reorganisation of the Corporate Debtor and maximisation of its assets. We are inclined to agree with the submissions of the Appellant in the light of the fact that the Appellant is a solvent company and discharging its debt obligation and also willing to pay the principal amount to the Respondent No.1.

51. In the above background, we find that the claim of the Operational Creditor with respect to the interest is not maintainable and, in that

situation, the claim does not meet the threshold for admitting Section 9 Application. Also we find that the objective of the Code, that is, maximising the value Debtor's assets, is unlikely to be served by initiating CIRP against the Appellant. We therefore do not concur with the claim of the Respondent No.1 and do not find justification in upholding the finding of the Adjudicating Authority.

52. The matter was earlier heard by us on 12.12.2024 and as an interim measure it was ordered by this Tribunal that no resolution plan shall be put for voting on depositing the entire principal amount as claimed in the Section 9 Application in a fixed deposit interest bearing account in the name of Registrar, NCLAT.

53. The Appellant had before this Appellate Tribunal through written submissions stated that the *"debt claimed by Respondent No. 1 in the Application under Section 9 of the Code is disputed, particularly with regard to the principal amount and interest, as no agreement exists on the latter. However, pursuant to the Order of this Hon'ble Appellate Tribunal dated 22.12.2024, the Appellant has deposited the principal amount, which may be released to Respondent No. 1 upon setting aside the Impugned Order. The disputed interest, absent any agreement, shall not be considered outstanding unless adjudicated by a competent of Court jurisdiction, wherein evidence is led by both the parties."*

54. Accordingly, the amount deposited with the NCLAT, is released to Respondent No.1 to discharge the liability with respect to the Principal amount. Accordingly, we set aside the impugned order, and release the Corporate Debtor-Appellant-Exclusive Linen Fabrics Pvt. Ltd from the rigours of the CIRP. No order as to costs. Liberty is given to the Operational Creditor – Shree Hari Yarns Pvt. Ltd. to seek appropriate remedy in accordance with law.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi.
April 16, 2025.
pawan