

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1086 of 2023**

**[Arising out of order dated 03.05.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Kolkata Bench-II, Kolkata in CP (IB) No. 48/KB/2022]**

**In the matter of:**

**Bajrang Steel Trading Company (India) Pvt. Ltd.,**

Having its registered office at:  
23A, Netaji Subhash Road,  
Kolkata- 700001

...Appellant

**Versus**

**Ramkrishna Engineering Pvt. Ltd.**

Having its registered office at:  
P.O. Kolorah, NH-6, P.S. Domjur,  
Howrah- 711302.

....Respondent

**Present:**

For Appellant: Mr. Anirban Bhattacharya, Mr. Dhruv Surana, Mr. Nikunj Berlia, Mr. Arya Hardik and Mr. Rajeev Chowdhary, Advocates.

For Respondents: Mr. Victor Dutta, Mr. Harsh Parashar and Mr. Sourajit Das Gupta, Advocates for R1.

**J U D G M E N T**

**(Hybrid Mode)**

**[Per: Barun Mitra, Member (Technical)]**

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated 03.05.2023 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench-II) in

CP(IB) No. 48/KB/2022. By the impugned order, the Adjudicating Authority dismissed the Section 9 application filed by the Appellant – Operational Creditor against the Corporate Debtor on grounds of non-fulfilment of the prescribed threshold limit of Rs.1 crore. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

**2.** We have heard Mr. Anirban Bhattacharya, Learned Advocate representing the Appellant and Mr. Victor Dutta, Learned Advocate representing the Respondent.

**3.** Outlining the factual matrix, the Learned Counsel for the Appellant submitted that Bajrang Steel Trading Company Pvt Ltd – Operational Creditor had been supplying iron goods to Ramkrishna Engineering Pvt Ltd – Corporate Debtor on the basis of purchase order placed by the Corporate Debtor. It was further submitted that the goods were delivered to the Corporate Debtor and were accepted without any objections or complaints at any point of time. For the goods supplied, invoices were raised by the Appellant. The Corporate Debtor never raised any dispute with regard to the correctness or validity of the invoices raised by the Appellant.

**4.** It was submitted that the Corporate Debtor had acknowledged balance confirmation in favour of the Operational Creditor on 24.05.2016. Since the outstanding aggregate amount of invoices was Rs.52.99 lakhs and payments were outstanding, the Operational Creditor issued a notice on 31.05.2017 demanding payment of the said amount. The Corporate Debtor thereafter

made part-payments of Rs.3 lakhs and Rs.2.50 lakhs only on 16.07.2018 and 26.06.2019 respectively. Since the Corporate Debtor was still required to pay a sum of Rs.47.49 lakhs to the Operational Creditor and the invoices contained a specific clause for payment of interest at the rate of 24% p.a. for delayed payments, the Operational Creditor issued a Demand Notice on 07.10.2021 demanding payment of Rs.1.45 cr from the Corporate Debtor which included an interest amount of Rs.97.84 lakhs only. It was further submitted that the Corporate Debtor replied to the Demand Notice on 01.11.2021 in which frivolous allegations were raised by them as an after-thought to avoid making payments. Hence, the Operational Creditor filed Section 9 application before the Adjudicating Authority on 04.01.2022.

**5.** The Learned Counsel for the Appellant contended that the interest of delayed payment was clearly stipulated in the invoices. It was also contended that the interest clause in the invoices constituted a written contract and hence the Corporate Debtor cannot deny or dispute such interest clause. Moreover, the Corporate Debtor having accepted these invoices without any protest had therefore clearly acknowledged that the interest formed a part of debt under Section 3(11) of IBC. Thus, it was contended that the Section 9 application satisfied the pecuniary jurisdiction of the Adjudicating Authority and the Appellant was entitled to payment under Section 3(6) of the IBC.

**6.** It was also pointed out that this Tribunal in ***Prasat Agarwal Vs Parasrampuria and Ors. in CA(AT)(INS) No. 690 of 2022*** has held that if interest of delayed payment is stipulated in the invoice, it will entitle the Operational Creditor for right to payment under Section 3(6) of IBC and the ***Company Appeal (AT) (Insolvency) No. 1086 of 2023***

interest will form a part of debt under Section (3)(11) of IBC. Assailing the impugned order, it has been contended by the Learned Counsel for the Appellant that the Adjudicating Authority has disregarded the judgment of this Tribunal in ***Prasat Agarwal supra*** and hence the impugned order is not tenable in the eyes of law.

7. Refuting the contentions raised by the Appellant, the Learned Counsel for the Respondent submitted that the Section 9 application filed by the Appellant/Operational Creditor is not maintainable since it does not meet the threshold criteria of Rs.1 cr prescribed in Section 4 of IBC. It was submitted that the principal amount claimed to have been in default is below the threshold limit as in Part IV of the Section 9 application, the Operational Creditor has admitted the principal amount in default as Rs.47.49 lakhs only and the remaining amount of Rs.97.84 lakhs is delayed payment interest. It has also been contended that the computation sheet annexed to the Section 9 application, the principal amount claimed to be in default is not inclusive of interest and that the interest amount has been separately added later.

8. The liability to pay delayed payment interest has been disputed and denied by the Corporate Debtor as there is no contract or agreement between the parties for payment of interest. It is contended that such unilateral imposition of interest is not acceptable and constitutes a valid ground of dispute between the parties. It has been also asserted that the Corporate Debtor had never agreed for payment of any interest amount whatsoever. Not a single correspondence has been placed on record by the Appellant to the

effect that the Corporate Debtor had ever agreed to pay interest on any outstanding amount. It was added that the Corporate Debtor in their letter dated 01.11.2021 addressed to the Operational Creditor had specifically denied the interest component. It is also submitted that the balance confirmation statement for the period 2015-16 which has been relied upon by the Appellant is a forged document. It was denied that the seal and signature has been put thereon by the Corporate Debtor or any authorised person on their behalf.

**9.** We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully. The moot issue for our consideration is whether in the facts of the present case, the Section 9 application filed by the Appellant is maintainable or not in the context of whether interest can be clubbed with the principal debt to cross the threshold limit of Rs.1 crore.

**10.** It is the case of the Appellant that the invoices issued by them to the Respondent clearly stipulates levy of 24% interest p.a. for delayed payment. These invoices constitute a contract in itself and such invoices having been acted upon by the Respondent further substantiates that the Respondent was liable to pay interest in case of delayed payment. It is also their contention that the Respondent had never disputed either the payment of interest or the percentage of leviable interest at any stage. Hence, the Respondent is liable to make payment of interest along with principal amount which aggregate amount crossed Rs.1 cr. Having failed to clear the outstanding dues, the

Corporate Debtor is liable to be brought under the rigours of the CIRP. It is also their case that it is a settled principle of law that to consider the threshold limit for admission of a petition under the IBC, the principal and the interest amount can be clubbed together. It has also been denied that the stipulation of interest was a unilateral act. Since the interest clause was categorically mentioned in the invoice which is contract between the parties, it cannot be said that the same was unilateral. The Appellant has also denied that there is any pre-existing dispute with regard to the operational debt.

**11.** When we see the material on record, we find that the entire debt including the levy of interest amount has been denied by the Corporate Debtor in their reply to the Demand Notice. The said reply of 01.11.2021 can be seen at page 363 of Appeal Paper Book (**'APB'** in short). For easy reference, the relevant excerpts is as reproduced hereunder:

01.11.2021

"To

Bajrang Steel Trading Co. (India) Pvt. Ltd.  
23A, Netaji Subhash Road  
Kolkata 700001

Dear Sir,

**Re : Purported Demand Notice dated October 07, 2021  
issued under the Insolvency and Bankruptcy Code, 2016**

*We are in receipt of your purported demand notice/Form -3 dated October 07, 2021 purportedly issued under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of a purported sum of Rs.1,45,34,345/-.*

.....

.....

.....

Without prejudice to the aforesaid, it is sated that there is no unpaid operational debt or any other debt due to you from us. The purported amount claimed by you is astronomical and unsupported by any documentary proof whatsoever. We state that all payments which you were entitled to have already been made and there exists no outstanding dues in any manner whatsoever. You have been continuously issuing letters claiming an absolutely baseless amount, solely for the purpose of making unjust enrichment at our expense. In any event, an action under the Insolvency and Bankruptcy Code, 2016 is not maintainable in the facts of the present case as the claim amount has already been seriously disputed by our various letters.

.....

Thereafter, you kept on demanding money on various occasion and the same was disputed by us on several occasion. The last disputed letter sent to you on 2017 against your letter dated 19.06.2017. After discussion with you and after coming up with an mutual understanding that the total amount was decided Rs. 14,47,816 after deducting all the amount which was previously paid by us to you. After deciding the amount of Rs. 14,47,816, we have also paid Rs. 2,50,000 vide cheque No. 585892 dated 25/06/2019 and Rs. 3,00,000 on 12.07.2018 vide cheque No. 332372 and for which you have also issued Money Receipt to us.

.....

In view of the above, we deny and dispute each and every allegation made by you. Save and except the above, none of the facts as represented by you are true or correct. We deny that the total amount of debt is Rs. 1,45, 34, 345/- or any part thereof. We deny that the principal amount is Rs. 47,49,701/- and the interest is Rs. 97,84,644/-. We deny that you have fulfilled all your obligations under the contracts.

.....

The instant reply to the purported demand notice/Form -3 dated October 7, 2021 is without prejudice to our other rights and contentions.

Regards,  
Ramkrishna Engineering Pvt. Ltd.”  
**(Emphasis supplied)**

**12.** The payment of the claim of interest made by the Operational Creditor has also been refuted by the Corporate Debtor in their reply filed before the Adjudicating Authority by the Corporate Debtor. It will be useful to refer to the pleadings of the Corporate Debtor in the reply filed to Section 9 application which is placed at pages 401-406 of the APB, the relevant extracts of which are as follows:

*"I state and submit as follows:*

*(a) .....*

*(b) In Part IV of the said petition, it has been admittedly alleged that the principal amount in default is Rs.47,49,701/-. The balance amount entirely consists of interest.*

*(c) Admittedly, there is no contract or agreement between the parties, either for payment of interest, or for payment of any amount. However, for the purpose of present issue of maintainability, I say that the parties never agreed upon payment of any interest whatsoever.*

*(d) Not a single correspondence was produced by the Operational Creditor to the effect that the Corporate Debtor had ever agreed to pay interest on any purportedly outstanding amount.*

*(e) In fact, by its letter dated 1<sup>st</sup> November 2021 issued in response to the demand notice, the Corporate Debtor had specifically denied the interest component, along with the principal amount.*

*(f) Moreover, from a perusal of the Computation Sheet annexed with the said petition, it will be evident that the alleged principal amount claimed to be in default has been mentioned as Rs.47,49,701/-, which is not inclusive of interest at all. The interest component has been separately added to the said alleged claim.*

*(g) No averment has also been made to the effect that the Corporate Debtor has ever paid interest on any outstanding amount at any point of time.*

*(h) The Balance Confirmation Statement issued for 1<sup>st</sup> April, 2015 to 31<sup>st</sup> March, 2016 is a forged document and the seal or the signature appearing thereat are not known to the Corporate Debtor. I am not aware of the signature or the seal appearing thereat and I state and*



*submit that the said document has never been issued by the Corporate Debtor at any point of time.*

*(i) Even assuming without admitting that the said Balance Confirmation Statement is genuine, the same also does not indicate any component of interest. A mere comparison between page 319 and 353 of the said petition would demonstrate that even as per the operational creditor itself, as on 31<sup>st</sup> March, 2016, the alleged principal amount was Rs.52,99,701/-, which was not inclusive of the interest component.*

*(j) In a nutshell, I say that there is no contractual rate of interest which was ever agreed upon by and between the parties and as such, no interest can be claimed by the operational creditor as against the corporate debtor. No document has been produced by the operational creditor wherefrom it can be deduced that the interest amount can be claimed by the operational creditor, or is payable by the corporate debtor.*

*(k) It is well settled that amount claimed to be in dispute can only include the principal amount and not the interest amount.*

*5. For the reasons mentioned hereinabove, I say that the said petition is not maintainable either in facts, or in law before this Learned Tribunal, as this Learned Tribunal does not have the pecuniary jurisdiction to receive, try or determine the said petition. Accordingly, the said petition deserves to be dismissed with costs.”*

***(Emphasis supplied)***

**13.** When we come to the impugned order, we find that at para 13 of the said order, the Adjudicating Authority after perusal of the records has concluded that “*the Operational Creditor has failed to bring forth any agreement between the parties that a default in payment would attract interest. Further, the interest of 24% is levied only in terms of a unilateral clause in the invoice and the Corporate Debtor never agreed on promised. Without clubbing such interest with the Principal amount, threshold as per Section 4 of the Code is not met.*” From a perusal of the reply of the Corporate Debtor to the Section 8 Demand Notice at para 11 supra and reply to the Section 9 application at

para 12 supra, we find that this is a case where according to the Corporate Debtor there was no agreement between the parties to make any payment of interest and the claim of interest is without any basis. The Corporate Debtor having refuted the claim of the Operational Creditor and also denied any liability towards interest payment, the claim regarding interest was clearly disputed. In the given facts and circumstances, we have no hesitation in holding that the Adjudicating Authority had correctly held that the amount of interest having been disputed, the said interest amount cannot be clubbed with the principal amount, thereby threshold criteria laid down under Section 4 of the IBC is not met.

**14.** We also find that the Adjudicating Authority while dismissing the Section 9 application has relied on two judgments of this Tribunal for not clubbing the interest amount on account of delayed payments with the principal amount. Reliance has been placed on ***Steel India v. Theme Developers Pvt. Ltd.*** in ***CA (AT) (Ins) No. 1014 of 2019*** wherein it has been held that: *"It is settled that the charging of interest, ought to be an actionable claim, enforceable under law, provided it was properly agreed upon between the parties."* Reference has also been made to judgment of this Tribunal in ***Pavan Enterprises v. Gammon India*** in ***CA (AT) (Ins) No. 148 of 2018*** wherein it has been observed that: *"If in terms of any agreement interest is payable to the Operational of Financial Creditor then the debt will include interest."* Per contra, the Learned Counsel for the Appellant has relied on the judgment of this Tribunal in ***Prasat Agarwal Vs Parasrampuriah and Ors.*** in ***CA(AT)(INS) No. 690 of 2022*** wherein it held that when interest of delayed ***Company Appeal (AT) (Insolvency) No. 1086 of 2023***

payment is stipulated in the invoice, it will entitle the Operational Creditor for right to payment of interest amount along with outstanding principal amount. While there can be no dispute that when an amount of interest is agreed or statutory, the same shall be clearly part of the debt as long as the claim of interest is not disputed. In the present case, however, when the Corporate Debtor in its reply to Section 8 Demand Notice and reply to Section 9 application has clearly and categorically contested the levy of any interest amount and also denied to pay any such interest, this is not a case of payment of any mutually agreed interest. Hence, **Prasat Agarwal** judgment does not come to the aid of the Appellant as the distinguishing in that case was that the Corporate Debtor had not disputed the levy of interest unlike in the present case where the interest has been both disputed and denied.

**15.** It is a well settled that the guiding principles on treatment of Section 9 application have been laid down by the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 35**. It is relevant to refer to paras 51 and 56 of the said Judgment which is extracted as hereunder:

*51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a*

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*plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

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*“56. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability.”*

**16.** The claim for interest being a disputed fact can only be adjudicated by a court of competent jurisdiction. Initiation of CIRP is certainly not an answer in the facts and circumstances of the case. The claim of interest being disputed, no error has been committed by the Adjudicating Authority in rejecting the application under Section 9. We cannot be unmindful of the fact that the objective of IBC is insolvency resolution of the Corporate Debtor and not for recovery of interest.

**17.** We are of the considered view that the Adjudicating Authority has rightly rejected the Section 9 application of the Appellant. There is no merit in the Appeal. The Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]  
Chairperson**

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

**[Mr. Arun Baroka]  
Member (Technical)**

**Place: New Delhi**  
**Date: 02.07.2024**  
Ashok Kumar