

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

**Comp. App. (AT) (Ins) No. 489 of 2023 & I.A. No. 1601, 1602**  
**of 2023, 2934 of 2024**

**IN THE MATTER OF:**

**Vijaypal Kishorilal Sharma**

**...Appellant**

**Versus**

**Amit Mittal & Anr.**

**...Respondents**

**Present:**

**For Appellants** : Mr. Varun Sharma, Mr. Akhil B. Kukreja,  
Adv.

**For Respondent** : Mr. Prakhar Mithal, Adv. for R1  
Mr. Meghna Rao, Yahya Batatawala,  
Muskan Jain, Adv. for IRP

**ORDER**

**Per: Justice Rakesh Kumar Jain: (Oral)**

**09.07.2024:** This appeal is directed against the order dated 24.03.2023 passed in CP (IB) No. 1193/MB-IV/2020 by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench – IV, Mumbai) on an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (In short ‘Code’) by Respondent No. 1 for the resolution of an amount of Rs. 1,03,37,635/- which included interest @ 24 % p.a. on the principal amount of Rs. 84,19,041/- from the date of default that is 21.09.2019 of each invoice has been admitted, moratorium was imposed and Kanhaiya Maheshwari was appointed as the Interim Resolution Professional (IRP).

2. At the time of preliminary hearing on 20.04.2023, the following order was passed:-

“20.04.2023: Learned Counsel for the Appellant submits that after filing of the Application under Section 9 of IBC, 2016, the Appellant has paid the entire principal amount of Rs. 84,79,041/- and only amount which was due is claim of interest. It is submitted that interest was not part of the purchase order and no interest could have been asked for. Learned Counsel for the Appellant submits that Operational Creditor did not bring to the notice of the Court about the payments made by the Corporate Debtor during pendency of the Application.

2. Submission needs scrutiny. Issue notice to the Respondents through Speed Post as well as Email. Requisites along with process fee, if not filed, be filed within two days.

3. Let Reply-Affidavits be filed within three weeks. Rejoinder, if any, may be filed within two weeks, thereafter. List this Appeal on 22nd May, 2023.

In the meantime, in pursuance of the Order impugned dated 24.03.2023, no further step shall be taken.”

3. Counsel for the Appellant has argued that before filing the application under Section 9 of the Code, Respondent No. 1 had filed a suit before the Hon'ble High Court of Bombay. The said suit was filed for recovery of Rs. 1,01,56,751/- alongwith interest @ 24% p. a.

4. The suit was decreed on 14.12.2022 directing the defendant (Appellant herein) to pay to the Plaintiff (Respondent No. 1 herein) a sum of Rs. 61.08.217/- with further interest of 18% per annum on the principal amount of Rs. 23,70,417/- from the date of suit till realization.

5. Counsel for the Appellant has submitted that in the said suit, the defendant while appearing as a witness, stated in examination chief that:-

“12. I say that after filing of the suit, the defendant made part payment of Rs. 34,00,000/- and after giving credit to the said payment, an amount of Rs. 61,18,217/- which includes principal amount of Rs. 23,70,417/- and interest Rs. 37,37,710/- 18% p.a is due and payable by the defendant to the plaintiff. I tender herewith Ledger account of the defendant maintained by the Plaintiff in their books of account as Exhibit-18. The said ledger account is signed by me during the course of business.”

6. He has thus submitted that since Respondent No. 1 has claimed interest @ 18% on the principal amount of Rs. 23,70,417/- and the Court has granted the interest @ 18 %, the amount calculated @ 18% interest is short of the threshold of Rs. 1 Cr. as provided under Section 4 of the Code. In this regard, he has submitted a calculation sheet of tax invoices @ 18 % interest p.a which read as under:-

Calculation Sheet of Tax Invoices raised by Respondent No. 1 + interest @ 18% p.a from the date of date of default up till 15.08.2020							
S. No.	Principle	Date of Default	Calculation Date	Interest Rate	Number of years	Interest amount	Principle + Interest
1	126,965	Monday, October 14, 2019	Saturday, August 15, 2020	18.00%	0.84	19108.2325	146,073
2	350,566	Friday, October 18, 2019	Saturday, August 15, 2020	18.00%	0.83	52059.051	402,625
3	789,562	Saturday, October 19, 2019	Saturday, August 15, 2020	18.00%	0.82	116855.176	906,417
4	453,102	Wednesday, October 23, 2019	Saturday, August 15, 2020	18.00%	0.81	66152.892	519,255
5	1,406,876	Thursday, November 7, 2019	Saturday, August 15, 2020	18.00%	0.77	195555.764	1,602,432
6	899,691	Friday, November 8, 2019	Saturday, August 15, 2020	18.00%	0.77	124607.2035	1,024,298
7	492,414	Sunday, November 10, 2019	Saturday, August 15, 2020	18.00%	0.76	67706.925	560,121
8	565,586	Tuesday, November 12, 2019	Saturday, August 15, 2020	18.00%	0.76	77202.489	642,788
9	899,110	Thursday, November 14, 2019	Saturday, August 15, 2020	18.00%	0.75	121829.405	1,020,939
10	1,247,213	Monday, November 18, 2019	Saturday, August 15, 2020	18.00%	0.74	166502.9355	1,413,716
11	421,862	Monday, November 18, 2019	Saturday, August 15, 2020	18.00%	0.74	56318.577	478,181
12	766,094	Friday, November 22, 2019	Saturday, August 15, 2020	18.00%	0.73	100741.361	866,835
Total		8,419,041				1,164,640	9,583,681
Total Principle						8,419,041	
Total Claim (P+I)						9,583,681	

7. According to the Appellant, the total amount comes to Rs. 9,583,681/- which is short of Rs. 1 Cr. and thus the application filed by Respondent No. 1 under Section 9 is not maintainable and hence, the impugned order deserves to be set aside.

8. In reply, Counsel for Respondent No. 1 has vehemently argued that the amount of interest claimed by Respondent No. 1 was @ 24% from the date of default whereas the suit has been decreed and the interest has been granted @ 18% p.a from the date of suit till realization.

9. It is further submitted that in case the interest @ 24% is calculated from the date of default till the date of filing suit then it will cross the threshold.

10. We have heard Counsel for the parties and perused the record with their able assistance.

11. The argument raised by Respondent No. 1 appears to be attractive but in view of the statement made by Respondent No. 1 while appearing in the suit which we have already captured in the early part of this order, Respondent No. 1 himself stated that he has received part payment of Rs. 34,00,000/- from the Appellant herein and after giving credit to the said payment, an amount of Rs. 61,18,217/- was remaining which includes principal amount of Rs. 23,70,417/- and interest of Rs. 37,37,710/- @18% p.a. Since, Respondent No. 1 itself has claimed the interest @ 18%

which too has been granted by the Hon'ble High Court in its judgment decree dated 14.12.2022, therefore, it does not lie in his mouth to claim interest @ 24% on the balance amount.

12. In view thereof, we accept the contention of the Appellant and the calculation submitted by him by way of a chart which we have already referred to above that the remaining amount to be claimed by Respondent No. 1 is less than Rs. 1 Cr. which does not meet the criteria of the threshold, therefore, the application filed under Section 9 of the Code is not maintainable. The appeal is thus allowed and the impugned order is set aside though without any order as to costs.

13. At this stage, Counsel for IRP has submitted that dues of the IRP have not been paid. In this regard, it will be open for the IRP to file an appropriate application, in accordance with law, before the Adjudicating Authority.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Mr. Naresh Salecha]**  
**Member (Technical)**

**[Mr. Indever Pandey]**  
**Member (Technical)**

*Sheetal/Ravi*