

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

**Company Appeal (AT) (Insolvency) No. 670 of 2024**

**&**

**I.A. No. 2191, 2405 of 2024**

**IN THE MATTER OF:**

**Sanjay Sharma Partner of  
MA Jagadamba Enterprises**

**...Appellant**

**Versus**

**Super Iron Foundry Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant : Advocate Mr. Yash Dalmia and Ms. Madhuri  
Pandey, PCS.**

**For Respondent :**

**O R D E R**  
**(Hybrid Mode)**

**03.05.2024:** Heard Counsel for the Appellant.

**2.** This appeal has been filed against the order dated 30.11.2023 in Company Petition (IB) No. 314/KB/2022 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Division Bench, Court – II, Kolkata), by which Section 9 application filed by the Appellant has been rejected.

**3.** Adjudicating Authority in paragraphs 14 to 16 has made following observations:

*“14. It is evident from the invoices filed with this application by the Operational Creditor, annexed at Pages 56 – 67 as Annexure “2” that the Operational Creditor has claimed the interest at the rate of 24% per annum if the bill is not paid within 30 days. It very clearly appears at the bottom of the invoices under the “Terms & Conditions” clause in para 3 that one “4” has been inserted by pen later after “2” thus “2%” can be read as “24%”. Further, it is evident that the “7” days were overwritten by pen as “30” days. The same fact*

has rightly been raised by the Ld. Counsel for the Corporate Debtor in its reply affidavit as well as in the reply to the demand notice dated 16.08.2022 in para 12.

15. Further, it is evident from the Indian Post Track Consignment, annexed with the Demand Notice dated 16.08.2022 at Page 19-20 to the Application that the demand notice was issued on 16.08.2022 at 06:37 PM and delivered to the Corporate Debtor on 18.08.2022 at 03:16 PM. It is admitted that on 16.08.2022, the Corporate Debtor has paid Rs. 10 Lakh to the Applicant at 08:19 PM. Thus, the averment made by the Applicant that the Respondent has intentionally transferred the money of Rs. 10 Lakh after receiving the Demand Notice to reduce the threshold financial limit as prescribed under Section 4 of the I&B Code is bald and has no merits. Further mere mention in invoices about the interest component is not sufficient to hold that interest is payable by the Corporate Debtor. To fortify the view, we would reply upon the decision passed by the Learned NCLT, New Delhi Bench in the case of **Rohit & Company v. Twenty First Century Wire Rods Ltd.** order dated **14.09.2023**, reported in **(2023) ibclaw.in 627 NCLT** that:

“7. ... it is observed that merely citing the interest rate in the invoices by itself wouldn't render it legally binding for the Corporate Debtor, ...”

**(Emphasis Added)**

16. Hence, we are of the view that the Operational Creditor, having a frivolous or vexatious intention, has filed this application with tempered documents by claiming 12 times more interest rate with the principal amount to reach the threshold financial limit as prescribed under Section 4 of the I&B Code. Further, the Operational Creditor deliberately did not bring the payment of Rs. 10 Lakh before filing this application on record. It is evident that the payment of 10 Lakh was made on 16.08.2022 by the Corporate Debtor before the receipt of demand notice under Section 8 of the I&B Code and the Applicant filed this application with the Registry of this Adjudicating Authority on 14.09.2022. Thus, we are of the view that this is a fit case to invoke the provision of Section 65 of the I&B Code, 2016.”

4. Adjudicating Authority was satisfied that this was not a fit case in which Section 9 proceeding can be initiated and dismissed the application with the cost.

5. Learned Counsel for the Appellant sought to contend that an interest amount was verbally agreed and hence the 24% interest was claimed.

6. Adjudicating Authority has also noted that there is some interpretation made in the invoices by the Appellant and if the interest is not allowed, the amount claimed was less than the threshold period.

7. We are of the view that present is not a fit case where this Court in exercise of Appellate Jurisdiction may interfere with the impugned order. However, we are satisfied that sufficient case has been made out to delete the cost of Rs. 5 Lakh penalty imposed on the Applicant.

We, thus subject to deletion of the penalty of Rs. 5 Lakhs, dismiss the Appeal.

It shall be open for the Appellant to take such other remedy for its claim as available in law.

**[Justice Ashok Bhushan]**  
**Chairperson**

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

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

*himanshu/nn*