

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

Company Appeal (AT) (Insolvency) No. 386 of 2025

[Arising out of the Impugned Order dated 02.01.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench-I in Company Petition (IB) No.157/CHD/HRY/2021]

In the matter of:

M/s SNJ Synthetics Limited,

Through its authorised person Mr. Sanjay Jalan
having its Corporate Office at Factory & Admin Office:
149, Sri Venkateswara Co-operative Industrial Estate,
Bollaram Village (Patancheru Mandal),
District Sangareddy- 502 325.

...Appellant

Versus

M/s PepsiCo India Holdings Private Limited,

Having its registered office at:
Level 3-6, Pioneer Square, Sector 62,
Near Golf Course Extension Road,
Gurugram- 122101 Haryana, India.

...Respondent

Present:

For Appellant : Mr. Anupam Lal Das, Sr. Advocate with Mr. Nithin Chowdary Pavuluri, Mr. Anirudh Singh and Mr. Subham Saurabh, Advocates.

For Respondent : Mr. Krishnendu Dutta & Mr. Abhijeet Sinha, Sr. Advocates with Ms. Avni Sharma and Ms. Simarpreet Kaur N., Advocates.

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 02.01.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench-I) in C.P. (IB) No.157/CHD/HRY/2021. By the impugned order, the Adjudicating Authority has dismissed the Section 9 application filed by the M/s SNJ Synthetics Ltd.-Operational Creditor seeking admission of M/s PepsiCo India

Holdings Pvt. Ltd.-Corporate Debtor into the rigours of Corporate Insolvency Resolution Process (**"CIRP"** in short). Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. Coming to the relevant factual background and sequence of events in the matter, put briefly, the Appellant-M/s SNJ Synthetics Limited, an MSME Operational Creditor, engaged in manufacturing PET preforms and thermoplastics maintained a long-standing business relationship with the Respondent-M/s PepsiCo India Holdings Private Ltd. being the Corporate Debtor. This relationship was formalised through a Supply Agreement dated 09.10.2018 and the transactions arising from this agreement were maintained through periodically reconciled mutual and open accounts. The Appellant continued fulfilling its obligations under the Supply Agreement and raised invoices from 2018 to 2021. Since the dues remained unpaid, the operational debt purportedly accumulated to Rs.1,96,80,953/- as on 28.02.2021. On 13.03.2021, the Appellant served a demand notice upon the Corporate Debtor under Section 8 of the IBC, enclosing invoices and account statements. Although the notice was acknowledged by the Respondent, no payments followed. The Appellant subsequently filed Section 9 petition seeking initiation of CIRP of the Corporate Debtor for the unpaid operational debt of Rs. 91,63,886/- towards principal and Rs. 1,05,17,067/- towards interest on delayed payment @ 24% p.a. The parties undertook a reconciliation of accounts during pendency of proceedings following which the principal amount was revised to Rs. 77,37,886/- . The Appellant however continued to claim interest at 24% p.a. On the direction of the Adjudicating Authority dated 02.01.2023, the Respondent paid

Rs.77,37,886/- towards the reconciled principal amount on 10.02.2023 which the Appellant accepted without prejudice but continued pressing for unpaid interest amount of Rs.1,05,17,067/-. The matter was finally heard by the Adjudicating Authority and impugned order was passed on 02.01.2025 dismissing the Section 9 petition by holding that CIRP could not be initiated against the Corporate Debtor since the principal amount had already been paid by the Corporate Debtor and therefore Section 9 petition is non-maintainable for interest component alone.

3. The Ld. Sr. Counsel, Shri Anupam Lal Das for the Appellant submitted that the Adjudicating Authority erred in dismissing the petition merely on the ground that the principal amount was paid. It was wrong on the part of the Adjudicating Authority to hold that after principal amount was settled, CIRP cannot be initiated solely for the interest component. The Adjudicating Authority had erroneously overlooked the principle that operational debt, including interest, must be considered in totality for determining the threshold under the IBC and cannot be bifurcated.

4. Submission was pressed that bifurcation of operational debt into principal and interest components lacked statutory sanction of IBC. It was asserted that the statutory threshold limit prescribed under Section 4 of IBC must be determined based on the aggregate of both principal amount as well as interest thereof. Segregation of operational debt into principal and interest is contrary to law and the Adjudicating Authority by treating the payment of principal amount as a full and final settlement has unsettled this settled position thereby undermining the statutory rights of the Appellant. Reliance was placed on the

judgement of this Tribunal in ***Prashat Agarwal v. Vikas Parasrampur*** in ***CA(AT)(Ins.) No. 690 of 2022*** and ***Anuj Sharma v. Rustagi Projects Pvt. Ltd.*** in ***CA(AT)(Ins) No. 550 of 2023*** wherein it was held that interest stipulated in invoices formed part of operational debt and must be aggregated with the principal amount in computing the threshold limits under Section 4 of IBC.

5. It was submitted that the interest component of 24% p.a. on delayed payment was part of the operational debt as interest was clearly stipulated in the invoices issued by the Appellant. Since these invoices were issued pursuant to the Supply Agreement of 09.10.2018, the interest component mentioned therein constituted an integral part of the contractual relationship between the two parties. Since these invoices bearing interest terms were issued regularly by the Appellant and was acted upon by the Respondent without any protest, this constituted a valid contract under Regulation 7(2)(b)(ii) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**" in short). Reliance was placed on the judgment of the Hon'ble Bombay High Court in ***Jatin Koticha v. VFC Industries Pvt. Ltd. 2007 SCC Online Bom 1092*** wherein it was held that unsigned invoices accepted through conduct amounted to enforceable contracts. Moreover, it was contended that the interest claim raised at the rate of 24% p.a. was never objected to by the Respondent during years of their business dealings or even at the accounting reconciliations undertaken. Objection to the payment of interest amount was raised by the Respondent for the first time during the hearing before the Adjudicating Authority which clearly shows that this belated objection to interest claim was an afterthought.

6. It was also contended that the Appellant being an MSME, it was entitled to protection and safeguards under MSME Act. Under Sections 15 and 16 of the MSME Act, the buyer is statutorily required to make timely payments, failing which, interest is payable. Hence, levy of interest at the rate of 24% p.a for delayed payment mentioned in the Appellant's invoices was in conformity with this statutory entitlement. It was further contended that even if the MSME Act is not applied, the Appellant still remained entitled to compensatory interest under the Interest Act, 1978 and general law. Thus, whether viewed through the lens of the IBC, the MSME Act or the Interest Act, the Appellant's right to the interest component is irrefutable. Hence, the findings returned by the Adjudicating Authority vide the impugned order that CIRP cannot be initiated solely for interest amount failed to appreciate the composite nature of operational debt comprising of both principal amount and interest component thereby rendering the impugned order legally unsustainable.

7. Refuting the contentions of the Appellant, Shri Krishnendu Dutta and Shri Abhijeet Sinha, Ld. Senior Counsels appearing for the Respondent contended that there was no contractual basis for claiming interest since the Supply Agreement dated 09.10.2018 which governed the business transactions between the two parties did not contain any clause providing for interest on delayed payments. It was submitted that the Adjudicating Authority had rightly held that the Section 9 application was not maintainable once the undisputed principal amount of Rs.77,73,886/- was fully paid by the Respondent during the pendency of the proceedings. It was emphatically asserted that the appeal is a clear misuse of the statutory provisions of IBC to recover a disputed and unsubstantiated

interest claim. Interest cannot be claimed merely on the basis of a stipulation to that effect in a bill or invoice, unless it is proven that such a provision is based on a contract or agreement on the part of the purchaser to pay interest. The invoices relied upon by the Appellant are unilateral documents which were not signed or acknowledged by the Respondent. No communication has been placed on record wherein the Respondent had agreed to pay interest. Hence the claim of interest is entirely untenable and contrary to the commercial understanding between the parties.

8. Assertion was made that IBC is a remedy of last resort intended for resolution of genuine insolvency and not for recovery proceedings. Thus, if an Operational Creditor pursues the Section 9 application only for the realisation of interest amount, as in the instant case, this violates the spirit, ethos and principles of IBC and should be treated as an application pursued with malafide intent. Submission was pressed that it is settled law that once the principal amount is paid and only a contested interest claim remains, a petition under Section 9 is not maintainable. The conduct of the present Appellant in persisting with the Section 9 application despite having received full payment of the principal amounts to an abuse of the process of law. Once the reconciled amount was paid, only the claim with respect to interest survives. The liability towards payment of interest being disputed by the Respondent could not become the basis of the application under Section 9. The question of the whether an interest liability had arisen and the quantum to be paid is subject matter to be determined by a court of competent jurisdiction and cannot be agitated before the Adjudicating Authority which is conferred only summary jurisdiction.

9. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

10. It is the case of the Appellant that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself. It was asserted that Regulation 7(b)(ii) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, recognizes an invoice as sufficient proof of operational debt. In other words, interest payment as operational debt can be demonstrated through invoice. In the present case, the Respondent not having disputed the interest stipulation in the invoice either at the time of placing orders or upon receipt of goods must be construed as Appellant's acceptance of the entire debt including interest. Hence, the total operational debt, including interest accrued at 24% p.a. surpasses the Rs. 1 crore threshold under Section 4 of the IBC, rendering their Section 9 petition fully maintainable. Stressing that the principal amount and interest on delayed payment as provided for in the invoice stipulation cannot be bifurcated, the Appellant has relied on the judgment of this Tribunal in ***Prashat Agarwal supra*** wherein it was held that when interest on delayed payment is clearly stipulated in the invoice, this entitles the supplier to "right to payment" under Section 3(6) of IBC and interest amount would form part of the "debt" under Section 3(11) of IBC.

11. Coming to our analysis and findings, when we look at material on record, it clearly reflects that the parties had established their business dealing basis a Supply Agreement. The relevant clause viz. clause 9 which deals with 'Payment

Terms' and Schedule-D which deals with 'Contract Prices and Payment Terms' do not provide for payment of interest. At the cost of repetition, for reasons of clarity, we would like to extract these clauses though the same has been reproduced at para 14.3 of the impugned order which reads as follows:

"9. PAYMENT TERMS

9.1 Seller shall issue Tax Invoice properly capturing all the relevant information and details as required under the GST law and rules/formats framed there under. The respective parties would be liable to pay GST, as applicable to the Government under the GST laws.

9.2 Notwithstanding anything contained in the agreement, both parties agree that in the event PIH is not able to avail Input Tax Credit due to reasons attributable to the Seller. PIH may hold the payment or debit an amount to the extent of input tax credit disallowed to PIH until the PIH actually avails Input Tax Credit.

9.3 Payment terms will be net no. of days as specified in price note in SCHEDULE 'D' i.e. 30 days from the later of the invoice received date or the date that the product is received at the Buyer's plant. If the payment due date falls on a Saturday, Sunday or holiday, the payment due date will be the next business day following such Saturday, Sunday or holiday. Payment will be deemed made if by electronic funds transfer ('EFT'), upon evidence of actual transfer to the Seller Account, Seller will issue an invoice, transport documents to the Buyer on the basis of the scheduled delivery.

Schedule - D

Contract Prices and Payment terms

Prices as per the price note duly signed in Dec 2017

SNJ 21st DEC 2017

The Payment terms for soft tolling under new vendor remains as 30 days from the date of receipt of invoice.

The additional cost for doing soft tolling with Pepsico India is Rs. 2.25 Rs / KG, by adding 1% wastage in edition to the purchase price of the resin.

Pricing will be can be mutually revised after Dec 2018."

Neither the Appellant nor the Respondent has questioned the veracity of the said clause and Schedule-D of the Supply Agreement. We do not find either of the two parties to have claimed that there was any amendment with respect to the above payment terms as envisaged in the Supply Agreement which undisputedly did not provide for payment of interest on delayed payments. Furthermore, there is no previous instance of payment of interest by the Corporate Debtor. Even in the reconciliation sign-off dated 12.06.2018, which was signed by both parties, no reference to interest was made.

12. Since there has been no amendment of the Agreement, the terms agreed between the parties in the Supply Agreement prevail over unilateral invoices. Even though invoices can play a crucial role in defining the rights and obligations between parties, however, there has to be an element of mutual consent, which can be discernible from conduct. When the ingredient of levy of interest on delayed payment is absent in the written contract, stipulation of interest payment in invoices can override the written contract only if there is mutual consent and mutual understanding between the parties in this regard which in the present case has not been demonstrated by conduct and practice. There is no evidence of payment of interest by the Respondent which has been substantiated by the Appellant. We are therefore inclined to agree with the Adjudicating Authority that unilaterally generated invoices signed by only one party cannot overrun or recast the terms of bi-partite agreements and create binding obligations on the other party to pay interest.

13. In this regard attention has been adverted by the Respondent to the judgement of this Tribunal in ***Krishna Enterprises vs. Gammon India Limited***

in CA (AT) (Ins) No. 144 of 2018 wherein it has been held therein that if no interest was payable, in terms of the contractual agreement, then only the principal amount would constitute the claim, basis which Section 9 application can be filed. We find the ratio of the above judgment to be squarely applicable to the facts of the present case and for easy reference reproduce the relevant portion of the said judgment as 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.

5. In the present appeals, as we find that the principle amount has already been paid and as per agreement no interest was payable, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. If for delayed payment Appellant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer.”

(Emphasis supplied)

14. We also agree with the Adjudicating Authority that the facts of the present case are distinguishable from the **Prashat Agarwal judgment supra** in view of the fact that in the present case the payment of interest clause on delayed payment does not figure in the Supply Agreement which was a bi-partite agreement. Moreover, the invoices basis which interest has been claimed by the Appellant in the present case were not even counter-signed by the Respondent thereby making the imposition of interest unilateral. There is nothing to substantiate that the Respondent has accepted the obligation to pay interest on delayed payment. Even the reliance placed on **Anuj Sharma judgment supra** also does not come to the rescue of the Appellant as in that case also the

Purchase Order containing interest clause on advance payment was issued basis a Distributorship Agreement which contained the terms of payment and delivery.

15. We further notice that the Adjudicating Authority has taken note that the Respondent has paid off the principal amount to the Appellant after reconciliation. The principal amount was paid off after it was revised downwards by the Appellant from Rs 91.63 lakhs to Rs 77.37 lakhs. The Adjudicating Authority has also noticed the stubborn reluctance on the part of the Appellant to revise the interest amount corresponding to reduced principal amount. Despite clear directions by the Adjudicating Authority on 20.04.2023 to furnish a detailed computation, the Appellant has been intransigently sticking to the same figure of interest amount leading the Adjudicating Authority to rightly question the basis and legitimacy of the interest claimed. For reasons of fairness and transparency, the Appellant should have offered a credible explanation to the Adjudicating Authority as to why the claim of interest amount remained unchanged inspite of scaling down of principal amount post reconciliation. This opacity on the part of the Appellant lends force to the contention of the Respondent that the interest component of Rs 1.05 Cr was being insisted upon to artificially to cross the threshold limit of Rs 1 Cr.

16. In the given circumstances when the principal amount claimed by the Appellant has already been paid, we agree with the Adjudicating Authority that there was no legally enforceable unpaid operational debt as required under Section 9(5) of IBC to trigger CIRP. We are also guided by the decision rendered by this Tribunal in case of **S.S.Polymers Vs Kanodia Technoplast Limited** in **CA(AT)/(Ins.) No. 1227 of 2019** in which a similar issue had arisen and this

Tribunal had held that claim of interest basis one-sided invoices cannot be the foundation for a Section 9 application. The relevant extracts of the judgment is as reproduced below:

“3. The Adjudicating Authority has noticed that a sum of Rs.25,00,000/- out of Rs.32,71,800/- was paid to the Appellant by 31st December, 2018 through RTGS(s). The remaining amount of Rs.7,71,800/- was also paid by ‘Corporate Debtor’ to the Applicant by 17th January, 2019 through NEFT(s). The said amounts were paid before the admission of the application under Section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under Section 9 of the I&B Code for a sum of Rs.2,16,155/- towards interest. In these background, the Adjudicating Authority observed that in the absence of any Agreement, no such amount can be claimed.

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 I&B 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 I&B 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 I&B Code.

6. We find no merit in this Appeal and it is accordingly dismissed.”

(Emphasis supplied)

17. The preambular objective of the IBC being insolvency resolution has been oft emphasised by the Hon’ble Supreme Court in a catena of judgements. The provisions of IBC cannot be turned into a debt recovery proceeding. Hence, the Adjudicating Authority has not committed any infirmity in not allowing the CIRP of the Corporate Debtor to be initiated solely on the basis of the claim of the contested and unsubstantiated interest component. The provisions of IBC

cannot be turned into a debt-recovery proceedings and to commend any such course of action would tantamount to pushing the Corporate Debtor to face the perils of corporate death instead of being rejuvenated and revived. We also notice that the Appellant has relied on the provisions of other laws like MSME Act or Interest Act to justify their claim of interest payment. Without making any observation on the merits of their contention, we would only like to add that neither the Adjudicating Authority nor this Appellate Tribunal is the appropriate forum for making any such determination on the liability of the Respondent-Corporate Debtor to pay interest under the MSME Act or Interest Act.

18. For the aforesaid reasons, we find no merit in the Appeal. There is no good ground which warrants interference of the impugned order. Appeal stands dismissed. No costs.

**[Justice Ashok Bhushan]
Chairperson**

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

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

**Place: New Delhi
Date: 07.05.2025**

Abdul/Harleen