

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

Company Appeal (AT) (Ins) No. 463 of 2026

**[Arising out of the Impugned Order dated 16.01.2026 passed by the
Adjudicating Authority, National Company Law Tribunal, Cuttack Bench
in CP (IB) NO. 33/CB/2025]**

IN THE MATTER OF:

M/S. SHIVANI ENTERPRISES

(Represented by its partner, Mr. Anirudh Prashad Agarwal)
Registered Office at: #318, Maheshwari Chambers,
Somajiguda, Hyderabad-500 082, Telangana

...Appellant

VERSUS

M/S. S SQUARE CARGO MOVERS PRIVATE LIMITED

Registered Office at: 29/09,
Nehru Nagar East, Bhilai, Durg,
Chhattisgarh-490020
Motilal Nehru Nagar,

...Respondent

Present:

For Appellant : Mr. Amir Bavani, Mr. Milan Singh Negi and Ms.
Rishika Kumar, Advocates.

For Respondents : None

ORDER
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of the Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant-Operational Creditor arises out of the Order dated 16.01.2026 (herein after referred as '**Impugned Order**') passed by the Adjudicating Authority, National Company Law Tribunal, Cuttack Bench in CP (IB) NO. 33/CB/2025. By the impugned order, the Adjudicating Authority has dismissed the Section 9 application filed by the Appellant on the ground of the operational debt claimed not meeting the

threshold limit. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. The Ld. Counsel for the Appellant, Shri Amir Bavani, giving a brief factual background of the matter at hand, submitted that the Appellant-Operational Creditor had supplied goods to the Corporate Debtor for which they raised invoices aggregating Rs. 1,52,02,816/- against which the Corporate Debtor- M/s S Square Cargo Movers Pvt. Ltd. made part-payment of Rs. 48,58,837/- leaving the principal amount of Rs. 70,54,167/- as outstanding. Since the invoices clearly stipulated levy of compounded interest @ 3% p.a on delayed payments, computing the interest liability alongwith the principal amount, a total amount of Rs. 1,06,09,920/- stood due and payable. As the goods supplied by the Appellant had been received and accepted by the Corporate Debtor without raising any disputes, but the Corporate Debtor did not release payment thereof, a Section 8 demand notice was issued to the Corporate Debtor on 03.03.2025 by the Operational Creditor. The Corporate Debtor not having repaid the outstanding amount, the Appellant-Operational Creditor filed a Section 9 petition. The Adjudicating Authority gave sufficient opportunity to the Respondent-Corporate Debtor to submit their reply but on not receiving their reply, proceeded ex-parte. The Section 9 application was however dismissed by Adjudicating Authority on threshold grounds, aggrieved by which order, the present appeal has been preferred by the Appellant.

3. Assailing the impugned order, it was submitted by the Ld. Counsel for the Appellant that the Adjudicating Authority had failed to appreciate that in the present factual matrix, the foundational requirements under Section 9 of the IBC stood fully satisfied in that there was substantial evidence to show

existence of operational debt and default which default amount exceeded the statutory limits prescribed under Section 4 of the IBC. It was added that the Corporate Debtor in their reply dated 18.03.2025 and 13.03.2025 to the Section 8 Demand Notice had acknowledged their outstanding liability without disputing the principal amount. Furthermore, when there was no pre-existing dispute surrounding the debt and default thereto, the Adjudicating Authority could not have rejected the Section 9 application. It was further added that the Adjudicating Authority had wrongly relied on the judgment of this Tribunal in ***Pramod Kumar Jain Vs Mangesh Vitthal Kekre in CA(AT)(Ins) No. 617 of 2024*** to conclude that interest liability could not have been added to the principal amount and therefore after excluding the interest amount held that the operational debt had failed to meet the threshold bar. It was asserted that this judgment was clearly distinguishable on facts as in that case, the Section 9 application was filed solely for recovery of interest in the absence of any outstanding principal amount.

4. Elaborating their arguments further, submission was pressed by the Appellant that the Adjudicating Authority had erred in not taking into account the accrued interest though interest liability was clearly stipulated in the invoices which invoices constituted binding contract between the parties. Moreover, when the Corporate Debtor had not disputed the interest clause contained in the invoices at any time prior to issue of Section 8 demand notice, it amounted to unequivocal acceptance of the terms of invoice including the interest clause by the Corporate Debtor. Hence, the Adjudicating Authority could not have disregarded the interest component reflected in the invoices. In support of their contention, it was emphatically asserted that the judgment

of this Tribunal in **Prashat Agarwal Vs. Vikash Parasrampur** in **CA(AT)(Ins) No. 690 of 2022**, it has been categorically laid down that interest is to be included in operational debt. It was vehemently asserted that the impugned order passed by the Adjudicating Authority rejecting the Section 9 application was in utter disregard of the law laid down in the above judgment and hence the impugned order deserves to be set aside.

5. We have heard the Appellant and perused the records carefully.

6. When we look at the impugned order, we find that the Adjudicating Authority has held at para 10.8 that there is no material on record evidencing acknowledgement or acceptance of liability towards interest. It has also been noted in the impugned order that the interest claim made by the Appellant has been expressly disputed by the Corporate Debtor and that in the absence of acknowledgement of interest by the Corporate Debtor, the Adjudicating Authority cannot rely upon the interest claimed by the Appellant for inclusion in the aggregate operational debt to determine the statutory threshold limit. We also find that in arriving at this conclusion, the Adjudicating Authority has also relied on a judgment of this Tribunal in **Pramod Kumar Jain supra** wherein it was held that if interest clauses contained in invoices are not backed by any agreed contractual terms, such interest cannot be treated as part of operational debt. It would therefore be useful to extract the relevant portions of the impugned order as below:

“26. On the other hand, in the present case, condition prescribed in the invoice is that in case of delay in payment, interest will be charged at the rate of 12 @ as per the agreed terms. This clause in the invoice is totally vague because it does not specify the period within which the amount was to be paid unlike the case of Prashat Agarwal (Supra) in which it was prescribed that interest will be charged after due date

of bill. Secondly, it is mentioned in this clause that interest will be charged as per the agreed terms whereas no agreed terms have seen the light of the day to enable the OC to claim interest as a part of debt. In this regard, the observation has been made, in the case of Comet Performance (Supra) by a three members bench of this Court, relying upon Rishabh Infra Through Hari Mohan Gupta Vs. Sadbhav Engineering Ltd., CA (At)(Ins) No. 1881 of 2024) in which it has been held that "invoices with interest clauses which were not part of the formal agreement are unenforceable".

The Adjudicating Authority after relying on the above judgment held that when interest clauses contained in the invoices are not backed by any agreed contractual terms, the interest component cannot be treated as part of enforceable operational debt and if the interest amount was segregated in the present facts of the case, the operational debt would not cross the threshold bar set out under Section 4 of IBC.

7. It is the case of the Appellant that it is an undisputed fact that the Corporate Debtor had issued invoices with interest component and that the interest component was never disputed. When interest was stipulated in the invoices, this interest liability was rightly clubbed with the outstanding principal amount by the Appellant. It was canvassed that the Corporate Debtor cannot run away from discharging the interest liability when interest payment clause was clearly reflected in the invoices raised by the Operational Creditor and these invoices having been acknowledged by the Corporate Debtor, it amounted to their acceptance of the interest clause. It was asserted that this Tribunal has held in the judgment of ***Descent Buildwell LLP Vs Reliance Communications Infrastructure Ltd. in CA(AT)(Ins) No. 871 of 2025*** that when invoices stipulate interest, the invoices constitute a valid and enforceable contract. Further, the Corporate Debtor 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 their acceptance of the entire debt including interest. Hence, as the total operational debt, including interest, crossed the Rs. 1 crore threshold of Section 4 of the IBC, the Section 9 petition could not have been non-suited by the Adjudicating Authority. Contending that the principal amount and interest on delayed payment as provided for in the invoice could not have been segregated by the Adjudicating Authority, 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.

8. To arrive at our analysis, a pointed query was made during the course of hearing to the Appellant to clarify whether the levy of interest was laid down by way of any formal contractual arrangement between the parties. In all fairness, the Ld. Counsel for the Appellant submitted that there was no contractual agreement governing their business arrangement but added the caveat that since interest liability figured in the invoices, this was sufficient ground to show that interest liability was binding on the Corporate Debtor. This Bench had posed another question to the Appellant as to whether interest amount was ever paid in the past by the Corporate Debtor to which the Appellant admitted that there was no instance of any interest liability having been paid in the past by the Corporate Debtor.

9. It can therefore be safely concluded that there was no contractual term which made provision for payment of interest liability on delayed payment by

the Corporate Debtor. We have also noted that it has been categorically admitted by the Appellant that there was no practice of interest payment made by the Corporate Debtor in respect of these business transactions.

10. This brings us to the issue whether mere stipulation of interest in the invoices makes the interest amount form part of operational debt which can be conjoined with the principal amount for computing the threshold limits under Section 4 of IBC. This aspect has been looked into by this Tribunal in **Shri Durga Scaffolding Noida Pvt Ltd Vs Kanwar Enterprises Pvt Ltd in CA(AT)(Ins) No. 1666 of 2025**. It is pertinent to add here that this judgement has also considered the ratio contained in the **Prashat Agarwal judgement supra** and the relevant para reads to the effect:

15. Coming to our findings, we notice that the Appellant has contended that when interest is stipulated in the invoices, this liability can be clubbed with the outstanding principal amount and in support of their contention, the Appellant has relied on the judgment of this Tribunal in Prashat Agarwal judgement supra. This contention of the Appellant is misplaced since in Prashat Agarwal case, the interest amount was added to the principal amount as the Operational Creditor and Corporate Debtor were at ad idem on the levy of interest as it was reflected in the contractual agreement between them unlike in the present case where the hiring order does not specify the levy of interest nor has the Appellant been able to demonstrate that there was any practice in vogue of interest having been earlier paid by the Corporate Debtor. In this backdrop, we find force in the contention of the Corporate Debtor that mere mention of interest liability in the invoices cannot be operated against the Corporate Debtor sans a separate agreement for payment of interest as has been held by this Tribunal in Rishabh Infra judgement supra.....

(Emphasis supplied)

11. Similar views have been expressed in another judgement of this Tribunal in **SNJ Synthetics Ltd vs Pepsico India Holdings Pvt Ltd in**

CA(AT)(Ins)386 of 2025. The relevant excerpts from the said judgment are as reproduced below:

“12. 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)

12. The essence of the above two judgements is that the interest amount claimed by an operational creditor cannot be justifiably added to the

operational debt if the interest amount reflected in the invoices was not backed by a contractual agreement nor demonstrated by past conduct and practice between the parties. Given this backdrop, we find that the reliance placed by the Appellant on the judgment of this Tribunal in ***Prashat Agarwal Vs Vikas Parasrampuria in CA(AT)(Ins) No. 690 of 2022*** is misplaced since the Operational Creditor and Corporate Debtor are not in tandem with each other on the levy of interest and there is no contractual agreement on record which provides for levy of interest nor has the Appellant been able to effectively demonstrate that interest was ever paid by the Corporate Debtor. Even the reliance placed on the judgment of this Tribunal in ***Descent Buildwell supra*** is misplaced as it was clearly held therein that when written contract does not contemplate interest on delayed payments, mere inclusion of interest in the invoices unilaterally is of no consequence as acceptance of payment of interest by a conduct or actual payment has to be proved which is not the case here. In this backdrop, we find substance in the finding of the Adjudicating Authority that unilateral claim of interest liability in the invoices sans a mutually accepted formal agreement stipulating payment of interest cannot become part of operational debt.

13. Hence, we are not in a position to accept the contention of the Appellant that the interest liability in the present factual matrix be added to the principal amount outstanding for computing the total operational debt which is outstanding qua the Corporate Debtor. Since it is an admitted fact that the total principal outstanding is Rs 70,54,167/- and any application under Section 9 must comply with Section 4 of IBC which mandates a minimum

default amount of Rs 1 Cr., the present Section 9 application clearly falls below the statutory threshold and hence cannot be maintained.

14. We also observe that the Adjudicating Authority has also taken notice at para 10.5 of the impugned order that the Corporate Debtor had specifically disputed the interest component in their reply to the Demand Notice. When the payment of interest is not found to have been mutually agreed to between the parties, the levy of interest by the Appellant and the denial to pay any such interest by the Corporate Debtor in itself becomes a ground of dispute. Hence, we do not find any error on the part of the Adjudicating Authority to hold that the dispute raised by the Corporate Debtor over enforceability of interest amount claimed by the Appellant was a ground of dispute between the two parties. Whether this interest component could have been factored in by the Appellant in computing the outstanding liability of the Corporate Debtor is clearly a question which can only be adjudicated by a court of competent jurisdiction and not in the summary proceedings conducted by the Adjudicating Authority.

15. 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)**

Place: New Delhi
Date: 17.04.2026
Sheetal/Abdul