



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.805/2019
In
CP (IB) No. 108/Chd/Pb/2017
(Admitted Matter)**

**Under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:

Kochar Overseas Private Limited

...Corporate Debtor

And in the matter of IA No. 805/2019:

M/s Kundan Lal Sidharth Kumar Jain

Through its Sole Proprietor,
Mr. Jagdish Chander Jain
Shop No. 114, New Anaj Mandi,
Gohana, Sonipat-131301

....Applicant

Vs.

1. Kochar Overseas Private Limited

through its liquidator, Mr. Ashish Aggarwal
having its registered office at
KotMit Singh, Tarn Taran Toad,
Amritsar, Punjab-143001

... Corporate Debtor

2. Punjab National Bank

Hall Bazar, Amritsar

... Financial Creditor

Order delivered on: 17.07.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant in

IA No. 805/2019

: Mr. Deepankur Sharma, Advocate

Per: Subrata Kumar Dash, Member (Technical)



ORDER

The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by **M/s Kundan Lal Sidharth Kumar Jain** (hereinafter referred to as 'Applicant') against the respondents with a prayer to direct the liquidator for reconciliation of the claim submitted by the applicant and to stay the operations of the liquidator.

2. The brief facts stated in the application are that the CIRP was initiated against the corporate debtor on 27.11.2017 and the liquidation commenced on 30.11.2018. The applicant is an Operational Creditor, who supplied paddy to the Corporate Debtor from 12.12.2013 to 05.07.2014 amounting to Rs. 13,33,80,889.38. The corporate debtor had made part payment against the invoices raised by the Operational creditor. It is stated that Claim has been admitted towards principal amount and an interest of Rs. 21.60% P.A. is payable to the applicant by the Corporate Debtor on the pending payments. The copy of the ledger account attached with the application as Annexure-A-2. The Operational Creditor has submitted its claim in Form-B on 16.12.2017 which is attached as Annexure-A-3.

3. A reply was filed by Respondent no. 1 by Diary No. 00837/01 dated 28.02.2023 wherein it is stated that the Resolution Professional has admitted the claim of the Operational Creditor to the extent of outstanding invoices payable after matching the same with the principal amount of the claim lodged. There is no such contract with regard to interest component on the delayed payment to the applicant. It is stated that as per the records available with the Resolution Professional/Liquidator there was no agreement between the applicant and the



Corporate Debtor. The Liquidator has sold all the assets of the Corporate Debtor through e-auction and the some released has also be distributed as per Section 53(1) of IBC. The total amount due to secured creditors was Rs. 77.88 crores and an amount of Rs. 69.88 crores is still due to Secured Creditors. Therefore, there is very less possibility of any amount being available for the payment of any Operational Creditor.

4. We have heard the learned counsels for the applicant as well as the respondent and perused the material available on record.

5. From the records, it is seen that the applicant had filed the claim with the Resolution Professional for an amount of Rs 10,14,83,434/- which included an interest of Rs. 5,49,81,982/-. It is an admitted fact that the principal amounts involved have been paid. The applicant could not make out a case to show that there was a specific agreement between the Corporate Debtor and the applicant for the payment of aforesaid interest component. Furthermore, the provisions of Code cannot be allowed as a recovery mechanism or to recover the claim of interest by an Operational Creditor as decided in a catena of Judgements of the Hon'ble Apex Court. The object of the IBC is to resolve the insolvency of the Corporate Debtor and to bring the Corporate Debtor on its feet. Reliance is placed on the Judgement of Hon'ble NCLAT in *M/s Amsons Communication Pvt. Ltd. Vs. M/s ATS Estates Pvt. Ltd Company Appeal (AT) (Insolvency) No. 540 of 2020 dated 17.01.2022* wherein it has been observed that

“18. The Adjudicating Authority has also recorded finding that claim for interest on the delayed payment is a disputed fact by the Corporate Debtor and it can only be adjudicated by a court of competent jurisdiction. The claim of interest being disputed, no error has been committed by the Adjudicating Authority in rejecting the Application under Section 9 of the Code. The provisions of Code cannot be allowed as a recovery mechanism



or to recover the claim of interest by Operational Creditor. The Application under Section 9 cannot be converted into proceedings for recovery of interest by Operational Creditor on delayed payment, that is not the object of IBC. The object of the IBC is to resolve the insolvency of the Corporate Debtor and to bring back the Corporate Debtor on its feet. The present is not a case where there is any insolvency resolution of Corporate Debtor.”
(Emphasis Supplied)

6. In view of the aforesaid judgement and the discussions above, IA 805/2019 is dismissed and stands disposed of accordingly.

-sd-
(Subrata Kumar Dash)
Member (Technical)

-sd-
(Harnam Singh Thakur)
Member (Judicial)

July 17, 2023
SM/SA