



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT-I  
KOLKATA**

**I.A. (IB) No. 1058/KB/2025**

**In**

**C.P. (IB) No. 27/KB/2023**

*An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016.*

**IN THE MATTER OF:**

**MAA SHARDA INFRASTRUCTURES**

**... Operational Creditor**

*Versus*

**SIMPLEX INFRASTRUCTURES LIMITED**

**...Corporate Debtor**

*And*

**I.A. (IB) No. 1058/KB/2025**

*An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.*

**IN THE MATTER OF:**

**MAA SHARDA INFRASTRUCTURES**

**... Operational Creditor**

*Versus*

**SIMPLEX INFRASTRUCTURES LIMITED**

**...Corporate Debtor**

*And*

**IN THE MATTER OF:**

**PRADEEP KUMAR JAISWAL**

*Versus*

**SIMPLEX INFRASTRUCTURES LIMITED**

**Pronouncement: 31.07.2026**

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**CORAM:**

**SMT. BIDISHA BANERJEE, HOB'BLE MEMBER (JUDICIAL)**

**MS. REKHA KANTILAL SHAH, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

**For the Operational Creditor:**

Mr. Shaunak Mitra, Adv.

Mr. Altamash Alim, Adv.

Ms. Rajashree Bhowmick, Adv.

Mr. Sumit Biswas, Adv.

Mr. Purnankar Biswas, Adv.

**For the Corporate Debtor:**

Mr. Joy Saha, Sr. Adv.

Mr. Snehashis Sen, Adv.

Mr. Adipta Kumar Pandit, Adv.

**ORDER**

**Per: Rekha Kantilal Shah, Member (Technical)**

1. The Court convened through hybrid mode.
2. The learned counsels for the parties were heard in extenso.
3. The instant Petition being **C.P. (IB) No. 27/KB/2023** has been filed by **Maa Sharda Infrastructures** (hereinafter referred to as the Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code (hereinafter referred to as IBC, 2016) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) against **Simplex Infrastructures Limited** (hereinafter referred to as the Corporate Debtor).

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4. The Operational Creditor has filed an Application being **I.A. No. 1058/KB/2025** seeking to file a Supplementary Affidavit, placing on record several documents including invoices, job orders, measurement sheets and ERP Data, supply orders, letter correspondences and a chart showing pro-rata payments and pending dues.
5. **Facts :**
- 5.1 The Operational Creditor had obtained a contract for construction work of Meja Thermal Power Project from NTPC, Meja Urja Nigam Pvt. Ltd. NTPC PO-Kohdar Allahabad (hereinafter referred to as NTPC, Meja Urja Nigam Pvt. Ltd.).
- 5.2 Pursuant to the aforementioned contract between the Operational Creditor and NTPC, Meja Urja Nigam Pvt. Ltd., the Operational Creditor approached the Corporate Debtor for job work of constructing roads and supply work of Moorum & Aggregate. Accordingly, the Corporate Debtor issued work orders for construction work and supply orders for supply of Moorum & Aggregate to the Operational Creditor from time to time.
- 5.3 On 01.10.2021, an amendment was carried out in the terms of the Work Order executed between the Operational Creditor and Corporate Debtor, placing a duty upon the Operational Creditor to upload GSTR-1 on the GST Portal.

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- 5.4 However, the GST Registration of the Operational Creditor was cancelled with effect from 05.01.2022 on account of its failure to file GST Returns.
- 5.5 Owing to repeated defaults in payment by the Corporate Debtor, the Operational Creditor issued a demand notice on 22.08.2022, claiming 1.77 crores to be due and payable.
- 5.6 Vide Letter dated 20.09.2022, the Corporate Debtor has denied and disputed the entire sum of Rs. 1.7 Crores along with 18% interest claimed by the Operational Creditor.

**6. Submissions on Behalf of the Applicant/Operational Creditor:**

- 6.1 It is submitted that the Applicant is a GST registered partnership firm<sup>1</sup> engaged in the business of construction and was approached by the Corporate Debtor for constructing roads and supplying Moorum and Aggregate pursuant to the contract between the Corporate Debtor and NTPC, Meja Urja Nigam Pvt. Ltd.
- 6.2 It is further submitted that the Corporate Debtor issued work orders for supply work and job work to the Operational Creditor from 2018 to 2021, against which the Operational Creditor raised corresponding invoices.<sup>2</sup> The last work order for job work was issued by the Corporate

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<sup>1</sup> Annexure A-5 of the Petition.

<sup>2</sup> Annexure A-1, A-2, A-3 and A-4 of the Petition.

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Debtor on 01.20.2021 and the last invoice was raised by the Operational Creditor on 31.12.2021.<sup>3</sup>

6.3 It is claimed that the Corporate Debtor has deducted TDS from the payments due to the Applicant. However, the deducted amount has not been deposited by the Corporate Debtor as evidenced by Form 26 AS relating to the Operational Creditor for the Financial Year ending in 2019, 2020, 2021 and 2022.<sup>4</sup>

6.4 It is further claimed that the last payment received by the Applicant amounted to Rs. 5 Lakhs which was transferred on 24.12.2021 as evidenced from the bank statement dated 24.12.2021.<sup>5</sup>

6.5 It is stated that in accordance with the terms of the work order, the mode of measurement of work done by the Operational Creditor would be in accordance with the actual quantity of work executed as per the instruction of the Engineer-In-Charge of the Corporate Debtor. Further, the Operational Creditor would be paid a monthly R/A Bill as per the measurement certified by the Engineer-In-Charge, after adjustment of the security deposit and deduction of Taxes within 10 days from the receipt of the corresponding payment from NTPC, Meja Urja Nigam Pvt. Ltd.<sup>6</sup>

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<sup>3</sup> Annexure A-8 and A-9 of the Petition.

<sup>4</sup> Annexure A-11 of the Petition.

<sup>5</sup> Annexure A-12 of the Petition.

<sup>6</sup> Annexure A-1 of the Petition.

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- 6.6 It is averred that neither the Corporate Debtor, nor NTPC, Meja Urja Nigam Pvt. Ltd. has communicated any allegation of degraded work and has continuously orally assured the Corporate Debtor that the balance amount will be paid shortly.
- 6.7 It is submitted that the Applicant has demanded payment of Rs. 1.7 Crores on several occasions and has sent a demand notice relating to payment of the aforesaid amount on 22.08.2022.<sup>7</sup>

**7. Submissions on Behalf of the Corporate Debtor:**

- 7.1 It is contended that the following bills<sup>8</sup> amounting to Rs. 57,36,036/- raised by the Operational Creditor had not been received or certified by the Corporate Debtor at the time of filing of the Application:
- a. Bill No. MSI/21-22/31 dated 05.09.2021
  - b. Bill No. MSI/21-22/32 dated 05.09.2021
  - c. Bill No. MSI/21-22/33 dated 05.09.2021
  - d. Bill No. MSI/21-22/34 dated 05.09.2021
  - e. Bill No. MSI/21-22/35 dated 30.09.2021
  - f. Bill No. MSI/21-22/36 dated 31.10.2021
  - g. Bill No. MSI/21-22/37 dated 30.11.2021
  - h. Bill No. MSI/21-22/38 dated 31.12.2021

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<sup>7</sup> Annexure A-15 of the Petition.

<sup>8</sup> Annexure A-14 of the Petition.

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Since no NOC has been issued as per the terms of the work order, therefore, the retained amount of Rs. 41,40,508/- is not payable to the Operational Creditor as the same cannot be considered as debt.

- 7.2 It is stated that after the Operational Creditor furnished the invoices for job orders and measurement sheets by way of Supplementary Affidavit, a payment of a sum of Rs. 96 Lakhs, comprising of the Principal Amount and excluding GST, was made by the Corporate Debtor as evident from the order dated 17.12.2024.
- 7.3 It is further contended that as per Clause 29 and 30 of the Work Order, the payment of invoices raised by the Operational Creditor was subject to GST Compliance by the Corporate Debtor. Further, Clause 31 of the Work Order states that in case of mismatch between the invoices of supplier uploaded in GSTR-1 and declaration of the Corporate Debtor under GSTR-2, the Corporate Debtor may withhold an amount equal to the credit loss due to supplier's non-compliance.<sup>9</sup>
- 7.4 It is further contended that there is a difference of Rs. 60,34,870 on account of non-compliance of GST. The year wise mismatch in the GST amounts paid by the Operational Creditor and the amounts which remains unpaid is as follows:

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<sup>9</sup> Annexure A-8 of the Petition.

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| Year  | Paid by Simplex | Submitted by<br>Supplier | Mismatch (Rs.)             |
|-------|-----------------|--------------------------|----------------------------|
|       | GST (Rs.)       | GST (Rs.)                |                            |
| 18-19 | 23,60,238.04    | 23,60,238.04             |                            |
| 19-20 | 26,70,066.88    | 43,09,653.48             | 39,23,402.96               |
| 20-21 | 82,33,056.44    | 43,09,653.48             | 39,23,402.96               |
| 21-22 | 21,12,844.98    | -                        | 21,12,844.98               |
|       | 1,53,76,206.35  | 93,39,958.40             | 60,36,247.94 <sup>10</sup> |

- 7.5 It is contended that owing to such non-compliance, the GST registration of the Applicant has also been cancelled with effect from 05.01.2022.<sup>11</sup> Clause 32 of the Work Order provides that in case of any loss of credit suffered by the Corporate Debtor, such amount can be withheld and/or be recovered by the Corporate Debtor from the Operational Creditor.<sup>12</sup> Thus, in addition to Rs. 60 Lakhs on account of mismatch between Form GSTR-1 and Form GSTR-2, the Applicant is also not entitled to Rs. 6,21,900/- as per Clause 32 of the Work Order.
- 7.6 It is further contended that the sum of Rs. 13,50,000/- as claimed on account of litigation costs cannot be claimed to be an Operational Debt due and payable to the Operational Creditor.

<sup>10</sup> Annexure A of Supplementary Affidavit on Behalf of Simplex Infrastructure Limited.

<sup>11</sup> Annexure B of Supplementary Affidavit on Behalf of Simplex Infrastructure Limited.

<sup>12</sup> Annexure A-8 of the Petition.

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- 7.7 It is contended that the Petition is not maintainable as the Operational Creditor is mandated to furnish copies of Form GSTR-1 and Form GSTR-3(b) in accordance with Regulation 2(D) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 7.8 It is further contended that despite receiving the payment of Rs. 96 Lakhs, the petitioner is continuing the present proceedings with a view to extort money from the Corporate Debtor. The Corporate Debtor has also placed reliance upon *Swiss Ribbons Private Limited v Union of India*<sup>13</sup> and *GLAS Trust Company LLC v BYJU Raveendran & Ors*<sup>14</sup>, to further support its contention that the IBC cannot be used for the purpose of debt recovery.
- 7.9 It is contended that since there exists no agreement between the Operational Creditor and the Corporate Debtor for payment of any interest, therefore, no interest can be claimed by the Operational Creditor. In this regard, the Corporate Debtor has placed reliance upon *Shitanshu Bipin Vora v Shree Hari Yarns Private Limited*<sup>15</sup>, *Rohit Motawat v. Madhu Sharma and Ors.*<sup>16</sup> And *Gandhar Oil Refinery (India) Limited v. City Oil Private Limited*<sup>17</sup>.

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<sup>13</sup> *Swiss Ribbons Private Limited v Union of India*, (2019) 4 SCC 17.

<sup>14</sup> *GLAS Trust Company LLC v BYJU Raveendran & Ors*, (2025) 3 SCC 625.

<sup>15</sup> *Shitanshu Bipin Vora v Shree Hari Yarns Private Limited*, 2025 SCC Online NCLAT 694.

<sup>16</sup> *Rohit Motawat v. Madhu Sharma and Ors.*, 2023 SCC Online NCLAT 1058.

<sup>17</sup> *Gandhar Oil Refinery (India) Limited v. City Oil Private Limited*, 2023 SCC Online NCLT 18388.

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**8. Findings and Analysis:**

- 8.1 We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present application on its merits, specifically within the ambit of points involved in the instant application.
- 8.2 The primary issue for consideration before this Adjudicating Authority is to ascertain whether there is a pre-existing dispute within the meaning of Section 8 of IBC, 2016 and whether in an absence of agreement between the parties interest on the principal amount constitutes an Operational Debt under Section of 5(21) of IBC, 2016.
- 8.3 In the present case, the Corporate Debtor entered into a contract with NTPC, Meja Urja Nigam Pvt. Ltd. for construction work. Pursuant to the said contract, the Corporate Debtor approached the Operational Creditor for job work of construction of roads and supply work of Moorum & Aggregate. From 2018 to 2021, the Corporate Debtor issued work orders for construction work and supply orders for supply of Moorum & Aggregate to the Operational Creditor.
- 8.4 At the time of filing of the Application, the Operational Creditor had claimed that an aggregate amount of Rs. 1.7 Crores is due and payable on part of the Corporate Debtor. The entire claim can be divided into the following categories:

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- a. Claim against Invoices raised amounting to Rs. 1.6 Crores, which is inclusive of the Retention Money amounting to Rs. 41 Lakhs.
  - b. Claims on Litigation Costs amounting to Rs. 13.5 Lakhs.
- 8.5 Since certain bills, as noted in Para 7.1 of this order, amounting to Rs. 57 Lakhs raised by the Operational Creditor had not been received or certified by the Corporate Debtor at the time of filing of the Application, the Corporate Debtor had claimed that the said amount was neither due nor payable. However, once the Operational Creditor brought the requisite job orders and measurement sheets on record, the Corporate Debtor had paid an amount of Rs. 96 Lakhs to the Operational Creditor. The same has been noted vide order dated 17.12.2024.
- 8.6 There is issue relating to dues of Rs. 13.50 claimed by the Operational Creditor relating to nature of services rendered. It has further asserted that an aggregate amount of Rs. 66 Lakhs is not payable on account of GST non-compliance.
- 8.7 In this regard, it is pertinent to note that clauses 28 to 32 of the work order dated 01.10.2021 indicates that the Operational Creditor was mandated to upload the Form GSTR-1 in the GST Portal. The invoices uploaded by the Operational Creditor in GSTR-1 would be compared to the declaration of the Corporate Debtor in GSTR-2. In case of mismatch between both the Forms on account on non-compliance on part of the Operational Creditor, an amount corresponding to the loss of credit in

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the hands of the Corporate Debtor would be withheld until such error is rectified.<sup>18</sup> The clauses are reproduced herein below:

29. The GST charged for such supply has to be duly paid by the supplier to the credit of the Government in sync with the "time of supply" and "place of supply" Rules.
30. GST Return (GSTR-1) incorporating the above should be duly uploaded in the GST portal within specified time period which is 10th of the subsequent month.
31. The details of supplier invoices as uploaded in GSTR-1 by the supplier will be matched online with SIMPLEX's declaration under Form GSTR-2 and in case of any mismatch, credit will be disallowed to SIMPLEX. In case such mismatch is due to any misinformation in tax invoice/non-compliance at your end, an amount corresponding to the loss of credit in the hands of SIMPLEX (along with corresponding interest and penalty charged, if any) would be withheld/recovered from the supplier till such error/mistake is rectified/corrected.
32. In case, supplier is black-listed (as per compliance rating under GST), no credit

would be available to SIMPLEX and in such a scenario, an amount corresponding to the loss of credit in the hands of SIMPLEX (along with corresponding interest charged, if any) would be withheld/recovered from you.

8.8 A bare perusal of the aforementioned clauses indicates that the Operational Creditor was under an implicit obligation to maintain a valid GST Registration. In the absence of such registration, it would be precluded from filing Form GSTR-1. Evidently, the Operational Creditor's GST Registration stood cancelled with effect from 05.01.2022.<sup>19</sup>

8.9 As a consequence, the Operational Creditor was rendered incapable of filing Form GSTR-1 and therefore could not comply with the terms and

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<sup>18</sup> Annexure A-8 of the Petition.

<sup>19</sup> Annexure B of Supplementary Affidavit on Behalf of Simplex Infrastructure Limited.

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conditions of the supply orders issued by the Corporate Debtor. In this regard, the Operational Creditor has asserted that it could not fulfil its GST compliance obligations owing to the Corporate Debtor's alleged failure to make timely payments under the supply and work orders.

8.10 On the other hand, the Corporate Debtor contends that the obligation of the Operational Creditor to maintain a valid GST Registration and upload GSTR-1 on the GST Portal in a timely manner is independent of the Corporate Debtor's obligation to release payments pursuant to the work done or goods supplied by the Operational Creditor.

8.11 At this juncture this Tribunal deems it apposite to reply upon *Mobilox Innovations Private Limited v. Kirusa Software Private Ltd., (2017) ibclaw.in 01 SC*, wherein the Hon'ble Apex Court has categorically held that:

*"24. ...What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be..."*

8.12 The Corporate Debtor in its reply dated 20.09.2022 to the Demand Notice issued under Section 8, had disputed the claim of the Operational Creditor and denied its liability to pay Rs. 13.5 Lakhs.<sup>20</sup>

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<sup>20</sup> Annexure A of Reply.

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Although the dispute was expressly articulated in the Reply to the Section 8 Demand Notice, the evidences placed on record suggest that the dispute regarding GST compliances predates the issuance of Section 8 Demand Notice.

- 8.13 The mismatch of Rs. 66 Lakhs between the invoices uploaded in Form GSTR-1 and the declaration of the Corporate Debtor in Form GSTR-3 forms a substantial part of the Operational Creditor's claim and prima facies reflects a dispute regarding the underlying goods supplied. The cancellation of the Operational Creditor's GST Registration further supports the existence of dispute in relation to the GST compliance and contractual obligations between the parties.
- 8.14 The significance of GST compliance in proceedings under Section 9 has also been statutorily recognized through the amended Regulation 2B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which places a mandatory obligation upon the Operational Creditor to furnish relevant extracts of Form GSTR-1 and Form GSTR-3B along with the Application under Section 9. The said provision is reproduced below:

*2B. Information to be furnished by operational creditor.*

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*An operational creditor shall furnish the following information along with an application under sub-section (1) of section 9, namely:—*

*(a) copies of relevant extracts of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to Goods and Services Tax and the copy of e-way bill wherever applicable:*

*Provided that provisions of this regulation shall not apply to those operational creditors who do not require registration and to those goods and services which are not covered under any law relating to Goods and Services Tax;*

**XXXX**

(Emphasis Added)

8.15 The term “shall” in the aforementioned provision signals a mandate which has to be adhered to by the Operational Creditors. Regulation 2B mandates filing extracts of Form GSTR-1 and GSTR-3B in order to verify the genuineness of the transactions entered into between the Corporate Debtor and the Operational Creditor.

8.16 In the present case, the mismatch in Form GSTR-1 and GSTR-2 coupled with the cancellation of Operational Creditor’s GST Registration itself demonstrates a dispute regarding contractual obligations of the parties which existed before the issuance of Section 8 Demand Notice. This dispute is not illusory and requires adjudication before an appropriate forum.

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8.17 In *Mobilox Innovations case (Supra)* the Hon'ble Supreme Court has also held that in a Section 9 Application, the Adjudicating Authority must reject the Application if a notice or record of pre-existing dispute exists. At this stage, the Adjudicating Authority need not delve into the merits of the disputed claims and only has to determine if there is a genuine and plausible dispute which requires further investigation. The relevant portion of the judgement is reproduced herein below:

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be*

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*satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

8.18 Thus, while exercising jurisdiction under Section 9 of IBC, 2016, this Tribunal cannot undertake an adjudication of the contractual rights and obligations of the Operational Creditor and Corporate Debtor under the terms of Work Order. Since the materials placed on record discloses a genuine pre-existing dispute regarding the GST Compliance which has direct bearing on the contractual obligations of the parties and the Operational Creditor’s claim, the present Application is barred under Section 9 of IBC, 2016.

8.19 The Corporate Debtor has also relied on several judgements to substantiate its contention that the additional interest of 18% claimed by the Operational Creditor on the Principal Amount is not payable as the payment terms of the work order does not include payment of interest. In *Shitanshu Bipin Vora v. Shree Hari Yarns Pvt. Ltd. and Anr.*, (2025) ibclaw.in 271 NCLAT, the Hon’ble NCLAT has held that:

*“37. ...Accordingly, the interest can be claimed only if there is an explicit agreement or contract between the parties.”*

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8.20 Further, in *Gandhar Oil Refinery (India) Limited v. City Oil Private Limited*, 2023 SCC Online NCLT 18388, it has been held that in absence of any agreement between the parties to levy interest, the interest cannot be clubbed with the principal amount due. The relevant paragraph of the judgement is reproduced herein below:

*“20. Mr. Prashat Agarwal (Supra) is a subsequent judgment, where the decision of the the Hon’ble High Court at Karnataka in Jyothi Limited (Supra) was not placed, which if placed may have influenced the Hon’ble NCLAT. The decision of a superior forum, which is also prior in time, could not be brushed aside. Hence, we would be constrained to hold that levying of interest being neither mentioned in any agreement entered into by the parties, nor being specifically admitted by the Corporate Debtor, in absence of any promise of the Corporate Debtor to pay such interest, could not be clubbed with the principal amount due to hold the interest as a ‘debt’ so as crossover the threshold amount of 1 Crore as ingrained in Section 4 of the Code by virtue of notification No. So 1205(E) dated 24 March, 2020 of the Ministry of Corporate Affairs increasing the threshold limit from one lakh to one crore for the purpose of section 4 of the Code.”*

8.21 In the present case, there is no material on record to establish that the parties had agreed to the payment of interest at the rate of 18% from 30.04.2018 till the date of payment of the invoices raised by the

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Operational Creditor. Thus, 18% interest in addition to the principal amount cannot be claimed by the Operational Creditor.

9. In view of the above discussion, **I.A. No. 1058/KB/2025** is allowed and disposed of and **C.P. (IB) No. 27/KB/2023** is **dismissed**.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
11. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Ms. Rekha Kantilal Shah**  
**Member (Technical)**

**Smt. Bidisha Banerjee**  
**Member (Judicial)**

Signed on the **31<sup>st</sup>** day of **July 2026**.

Anubhuti S. (LRA)