

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

Company Petition (IB) No. 814/ND/2019 (IA/1658/2020)

In the matter of:

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and
Rule 11 of the National Company Law Tribunal Rules, 2016

AND

In the matter of :

M/s Om Logistics Ltd

.....Operational Creditor

VERSUS

M/s NTL Electronics India Limited

.....Corporate Debtor

AND

In the matter of :

M/s Roop Polymers Limited

Registered office at:-

Mezzanine Floor, 47,

Community Centre, New Friends Colony,

New Delhi South Delhi-110025

.....Operational Creditor

VERSUS

Pooja Bahry,

Resolution Professional of M/s Om Logistics Ltd,

Having its office at:-

59/27, Prabhat Road,

New Delhi-110005

.....Resolution Professional

ORDER DELIVERED ON: 17/08/2020

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)

-Sd-

For the Operational Creditor: Ms. Mahe Zehra, Ms. Pooja Bahry, IRP & Ms. Prachi Johri for RP

For the Respondent/ Resolution Professional: - Mr. Alok Kumar, Soma Yadva (Advocates)

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL

1. The present application has been filed on behalf of M/s Roop Polymer Limited in Company Petition No. IB/814/ND/2019, praying therein to direct the Resolution Professional to admit the claim of the applicant of Rs. 33,04,823.40/- towards mould cost and interest in addition to the admitted claim of Rs. 75, 62,720/.
2. The facts mentioned in the petition in short is that the petitioner earlier filed an application under Section 9 of the IBC, 2016 being CP (IB) No. 1391/ND/2019 and vide order dated 05.09.2019, the applicant was informed by this Adjudicating Authority that this application has become infructuous as the CIR Process against the Corporate Debtor has already been initiated in IB-814/2019 and liberty was given to the petitioner to raise its claim before the Resolution Professional. Further, the applicant had submitted same, as it was submitted by the applicant in IB-1391/2019, supported with the documents and the total claim of the applicant was of Rs. 1,58,21,323/- but when the applicant perused the list of creditors uploaded on the website of the Corporate Debtor on 05.02.2020 then the applicant came to know that out of total claim submitted by the applicant, the Resolution Professional has admitted only Rs. 75,62,720/- and disallowed the rest of its claim of Rs. 33,04,823/- towards the mould and agreed contractual interest.
3. Further, it is submitted that the Corporate Debtor in the normal course of business approached the applicant and expressed the desire of buying certain goods/parts. Hinging upon the representations made by the Corporate Debtor,

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the applicant agreed to supply goods parts on the basis of certain terms and conditions and in Pursuant to the same, the Corporate Debtor and applicant had entered into the quality cum supply agreement (“Supply Agreement”) dated 07.01.2016 for the supply of the goods parts. Copy of the supply agreement is annexed and marked as Annexure A5.

4. Further, Pursuant to the execution of supply agreement dated 07.01.2016, the applicant started supplying goods parts to the Corporate Debtor. The business relations between the parties were such that on the issuance of purchase order by the Corporate Debtor upon the applicant, the applicant used to raise invoices against those purchase orders and supply goods accordingly, goods supplied by the applicant were duly accepted and received by the Corporate Debtor. The Corporate Debtor has utilised all the goods and no demur or objection whatsoever was raised by the Corporate Debtor in respect of the goods supplied.

5. Further, in addition to the supply agreement, the applicant and the Corporate Debtor had also entered into an agreement dated 07.03.2017 for “Manufacturing of Tooling(s)/Mould(s)/ for supply of NTL Parts” (mould agreement). The relevant terms and conditions of the mould agreement as agreed between the parties are following: -

(i). As per Clause 1 of the mould agreement, it was agreed that the Corporate Debtor shall release the order for tooling/mould and the applicant shall manufacture goods/parts thereof with the use of tooling/mould developed for Corporate Debtor and the delivery of the same was to be made by the applicant as per the terms of purchase order issued.

(ii). Further Clause 2 specifically states that the Corporate Debtor shall pay for the cost of said tooling/moulds of which, the Corporate Debtor has already paid 30% of the cost i.e. Rs. 13 lakhs (approx.). Copy of the mould agreement is annexed and marked as Annexure A-6.

6. Further, the applicant under the mould agreement undertook procure mould/tooled for manufacturing goods. The arrangement for the same was that, whenever the Corporate Debtor released the order for tooling/mould for manufacturing of goods/parts, the applicant used to place orders with third party to procure the mould/tools for manufacturing goods/parts. The Third party in return, used to raise the invoices for the supply of such mould/tools to the applicant. The applicant after obtaining the mould/ parts deliver the same to the Corporate Debtor. The purchase orders issued by the Corporate Debtor for the supply of mould/tools are following: -

Sno.	Item Code	Item Description	Amount	Terms	PO No.	PO Date
1	7PNM0000 000000755	Mould for 40W CHI Plastic DOME-120mm	330000	30% Advance 70% Amortize	POL- RKR1 - 41025 76	22.02.201 7
2	7PNM000000000 0756	Tool for 40W CHI AL Cap- 120MM	82500	30% Advance 70% Amortize	POL- RKR1 - 41025 76	22.02.201 7
3	7PNM000000000 0754	Mould for 40W CHI Heat Sink 120MM	300000	30% Advance 70% Amortize	POL- RKR1 - 41025 76	22.02.201 7
4	7PNM000000000 0735	Mould for Rubber Gasket for 25W SL Heat Sink	142500	30% Advance 70% Amortize	POL- RKR1 - 41023 50	10.01.201 7
5	7PNM000000000 0761	Mould for PI End Cap	180000	30% Advance 70% Amortize	POL- RKR1 -	08.03.201 7

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					41027 12	
1	7PNM000000000 0760	Mould for Grommet	52500	30% Advance 70% Amortize	POL- RKR1 - 41027 12	08.03.201 7
7	7PNM000000000 0748	7PNM000000000 0748	180000	30% Advance 70% Amortize	POL- RKR1 - 41025 42	15.02.201 7

Copy of purchase orders issued by the Corporate Debtor and the invoices raised by the third parties marked as Annexure A7 and Annexure A8 respectively.

7. Further, the moulds/tools procured by the applicant was utilised in manufacturing of goods and the same was delivered to the Corporate Debtor accordingly. In pursuance of the same, the Corporate Debtor was liable to make payments against the cost of the mould, which was procured by the applicant from the third parties for manufacturing of goods. The outstanding cost of the mould, which the Corporate Debtor is liable to pay is to a tune of Rs. 26.755 lakhs. Copy of the working computation sheet is marked as Annexure A9.
8. Further, the Resolution Professional has also wrongly rejected the applicant claims towards the interest. Further, in pursuant to the execution of supply agreement dt.07.01.2016, the applicant had raised the invoices from time to time and rate of interest is mentioned in the invoice is 24% payable on overdue bills are liable to be paid by the Corporate Debtor in case of default in making the payment. Further, *Hon'ble Delhi High Court in case of M/s Squar Communication Vs. Ignou University & Ors. (2018 SCC Online Del 110030)* held that interest can be charged on the

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basis of invoices and in this regard, applicant also placed reliance upon the decision of Hon'ble Delhi High Court in a case reported in AIR 1992 Delhi 357, NCLT *Mumbai Bench in the case of DF Deutsche Forfait AG and Anr. Vs. Uttam Galva Steel Ltd. CP No. 45/I & BP/NCLT/MAH/2017*. Further, the total claim of the applicant that ought to have been admitted by the Resolution Professional is as follows:-

Claim towards mould cost : Rs. 26,75,500/-

Claim towards interest: Rs. 6,29,323.40/-

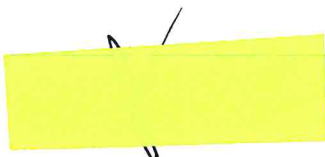
Total Claim of Rs. 33,04,823.40/-

9. Further, the Resolution Professional has erred in not accepting the claim of the applicant towards the mould cost and interest.
10. We have heard the Ld. Counsel for applicant as well as Ld. Counsel for the Resolution Professional and pursued the averments made in the application as well written submissions filed on behalf of parties and decisions upon which both the parties have placed reliance.
11. Ld. Counsel for applicant in course of arguments submitted that the Resolution Professional has disallowed the claim of Rs. 33,04,823.40/- towards the cost of mould made exclusively for and on the instruction of M/s NTL Electronics Limited apart from the contractual interest.
12. He further submitted that the applicant had submitted the Form B, which is at page 17 of the main application, in which in the clause 4, amount of claim including interest and in clause 5- the details of documents have been referred. He further submitted that it had been agreed between the parties that development charges will be paid by Party A and Party B will return the mould and tools within 48 hours of written request by Party A.
13. He further submitted that in furtherance to the supply agreement, the parties entered into mould agreement dated 07.03.2017 as Annexure A6 at page 198-199. He further submitted that mould and tools made specifically

for the Corporate Debtor and without the mould, applicant cannot manufacture the goods, which was supplied to the Corporate Debtor.

14. He further submitted that various clauses of the mould agreement shows that the mould and tools are the property of the Corporate Debtor, which was procured by the applicant in accordance with purchase order issued by the Corporate Debtor and in pursuance of the agreement, the Corporate Debtor had issued the purchase orders, which is at page 206-209 as Annexure A-7, therefore, the amounts incurred by the applicant towards moulds are liable to be paid by the Corporate Debtor and the Resolution Professional was entitled to accept this claim of the applicant.
15. He further submitted that against the total amount of Rs. 8397816.28/- for supply of goods, the Corporate Debtor has paid Rs. 2 lakhs and Rs. 339250 and outstanding of Rs. 7958566.38/-.
16. He further submitted that as per clause 2 of the invoice, the Corporate Debtor is liable to pay interest at the rate of 24% and the same has been filed with Form B, which is at page 45 to 65.
17. He placed reliance upon the following decisions:- Decision of Hon'ble NCLAT in Company Appeal (AT) Insolvency No. 237 of 2017 in the case of Mintri Tea Company Vs. Punjab National Bank, decision of NCLT Mumbai Bench in the case of Jatin Koticha Vs. VFC Industries Pvt. Ltd. 2008(2) Bom Cr 155 ,decision of Hon'ble Bombay High Court in the case of Olive Tree Trading Pvt Ltd Vs. FLLi De cecco Di Filipro Fara S Martino SPA in writ petition no. 2694 of 2018.
18. He further submitted that earlier the applicant had filed an application under Section 9 of the IBC, 2016 before filing the application he served the demand notice as required under Section 8 of the IBC and Corporate Debtor neither denied nor disputed the amount claimed in the petition.
19. He further submitted that the RP without considering the documents wrongly rejected the claim of the applicant.

20. On the other hand, Ld. Counsel for the Resolution Professional submitted that the supply agreement, which is at page 196 is not signed by the parties and she further submitted that the invoices for supply of goods do not bear any PO number nor it bears any receiving signature of the Corporate Debtor and she further submitted that the mould agreement is not signed and the invoices for mould are not part of the claim form-B.
21. She further submitted that there is no interest clause in the agreement rather agreement says that the invoices to be strictly in accordance with the Purchase Order and in this regard, she referred page 197 of the paper book of the petitioner and she further submitted that there is no confirmation in mail and no payment of interest has been paid as per the ledger available in the companies documents and she further submitted that the interest does not constitute Operational Debt and in this regard, she placed reliance upon the judgment of Shally Sati Vs. Karan Motors passed by this Adjudicating Authority Bench and the Steel India Vs. Theme Developers Pvt Ltd. of NCLT Mumbai Bench and she further submitted that the Resolution Professional cannot adjudicate the claim because the proceeding under the IBC are not recovery proceedings and in this regard, she placed reliance upon the decision of Hon'ble Apex Court in the case of Swiss Ribbons Pvt Ltd.
22. She further submitted that the amount has been verified as per the ledger account available with the company. She further submitted that the books of accounts of the Corporate Debtor shows that no interest was ever paid by the Corporate Debtor to the Operational Creditor. She further submitted that the suspended board of directors had informed the Resolution Professional that there is no such specific agreement/admission regarding acceptance of interest amount on the delayed payment. She further submitted that applicant has admitted that its claim was exaggerated because original claim of applicant was Rs. 1,58,21,323/- as per claim form-B at page 17 and the amount admitted is Rs. 75,62,720/-



and rejected claim is of Rs. 82,58,603/- but the applicant in this application has prayed claim for Rs. 33,04,823.40/, which includes the cost of mould and interest as per para 8 of the application.

23. In the light of the submissions raised on behalf of the parties, now we shall consider the claim of the applicant. We have again gone through the averments made in the application and the documents enclosed as well as written submissions filed on behalf of both the parties and decisions upon which both the parties have placed reliance and we find that it is the admitted fact that the applicant has filed the claim before the Resolution Professional in respect of total amount of Rs. 1,58,21,323/- and out of that Rs. 75,62,720/- has been allowed by the Resolution Professional. We further noticed that in para 8 of the application, the applicant mentioned the following facts “ thus the total claim of the applicant ought to have been admitted by the RP is as follows:- claimed towards mould cost Rs. 26,75,500/- and claim towards interest Rs. 629,323.40/- and the total claim is of Rs. 33,04823.40/- and if we shall add this amount with the admitted amount then the total amount would be Rs. 1,08,67,543.40/- whereas the applicant original claim was of Rs. 1,58,21,323/-, which shows that the amount mentioned in form-B was more than the amount claim in this application and no explanation has been given by the applicant, why there are huge difference in between the two. The form-B is at page 17 of this application as Annexure A3. We have gone through the Form B and we find that the total amount of claim mentioned at column 4 is of Rs. 1,58,21,323.40/- and the bifurcated amount is of Rs. 1,51,92,000/- being the principal amount and Rs. 6,29,323.40/- being 24% interest and we further noticed that in column no. 7 of the Form B, details of the debt has been referred and the amount has been bifurcated and as per averments made in column 7 of the form B, the total value of the goods supplied against the invoices raised was to the tune of Rs. 83,97,816.38/- and out of that, the Corporate Debtor had paid Rs. 2 lakhs and Rs. 3,39,250/- and

therefore, the remaining balance outstanding was of Rs. 78,58,566.38/- which has been admitted by the Resolution Professional, the amount, which the Resolution Professional has not admitted as per column 7 of the form B is Rs. 48,79,000/-, Rs.3,46,000, Rs.21,09,000/-, which are towards the cost of mould, finished goods lying with the Operational Creditor and raw materials stocked lying with the Operational Creditor respectively and apart from those claims, the applicant had also claimed Rs. 6,29,323.40/- towards the interest. When we shall consider this part of the claim of the applicant along with the averment made in the present application then we find, in place of Rs. 48,79,000/-, the Corporate Debtor has claimed Rs. 26,75,500/- towards mould cost and Rs.6,29,323.40 towards interest, as per averment made in para 8 of this application and no explanation has been given by the applicant regarding such huge differences in respect of mould cost, which occurred in the Form B and in para 8 of the application.

24. At this juncture, we would also like to refer the purchase orders upon which, the applicant has placed reliance and the applicant has attached these purchase orders at page 206-209 and on the basis of these four purchase orders, the applicant claimed that they have purchased mould on behalf of the Corporate Debtor. We have gone through these purchase orders, which are at page 206-209 and we find that none of the purchase order was signed by any person, although there are three columns, which indicates the signatures of the persons, i. signature of person, who prepared the purchase orders, ii. Signature of person, who approved the purchase orders and iii. Signature of the director but none of column is signed by any of the persons, therefore, it is unsafe to place reliance upon the unsigned documents, on the basis of which applicant claimed that they purchased the mould for the Corporate Debtor.

25. At this juncture, we would also like to refer the mould agreement, on the basis of which, the applicant claimed, the purchase orders were issued by the Corporate Debtor, which is at page 198-209 of the paper book as



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Annexure A6 and on perusal of the same, we find that this document also does not bear the signature, either the representative of NTL India Limited or the representative of the applicant, of course on behalf of the applicant the full name of the person is mentioned but on behalf of NTL India Limited even the full name of the person is not mentioned, who had entered into the contract on behalf of corporate debtor.

26. At this juncture, we would also like to mention this fact that this stamp has been purchased by the applicant in their name, which would be evident from page 198 i.e. E-Stamp, in which the name of the purchaser is mentioned M/s Roop Polymers Ltd. But the name of second party is not shown. As we have already noticed that this document is not signed by any of the party, therefore, on the basis of that, it cannot be treated as valid document and similarly the unsigned purchase orders, (which the applicant has referred at page 206-209) can also not be treated as valid documents and the claim of the applicant is based upon these documents and on the basis of that the applicant claimed that third party has raised the invoices for the purchase of the mould and that amount, the applicant claimed from the Corporate Debtor and on the basis of that, the applicant had filed the claim before the Resolution Professional.
27. For the reasons discussed above, in our considered view, since the applicant during the course of hearing, and by filing the written submissions failed to convince us that under what provision of law, the claim is maintainable on the basis of unsigned documents, therefore, under such circumstances, we are unable to accept the contention of the applicant that on the basis of the agreement, which is referred at page 198 and on the basis of purchase order, which are referred at 206-209, they purchased the mould from the third party. In our considered view, this claim of the applicant in the absence of valid documents, in other words, in the absence of signed documents is not liable to be accepted.



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28. For the reasons discussed above, we are of the considered view, the claim of the applicant towards the mould in the absence of valid documents, in other words in the absence of signed documents is not liable to be accepted, therefore, the Resolution Professional has rightly rejected the claim of the applicant towards the mould cost.
29. So far the interest is concerned, we have gone through the decisions upon which applicant has placed reliance and we are of the considered view the definition of operational debt has not been discussed in any of the decisions, whereas this Bench while considering the claim of interest under Section 9 of the IBC in the case of Shally Sati Vs. Karan Motors and in Shitla Paper Mills Vs. Superior Industries discussed this issue and also discussed the order of NCLT Mumbai Bench in the case of *DF Deutsche Forfait AG and Anr. Vs. Uttam Galva Steel Ltd. CP No. 45/I & BP/NCLT/MAH/2017*, therefore, at this juncture, we would like to refer the finding given by us in Company Petition (IB) 1986/2019 in the case of Shitla Papers Pvt. Ltd. and the same is quoted Below: -

“In the light of that submissions, we would like to consider the definition of Operational Debt i.e. Section 5(21) of IBC as well as Financial Debt i.e. Section 5(8) of the IBC and the same is quoted below:-

(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

- (a) money borrowed against the payment of interest;**
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;**
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;**
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;**

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(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

2[Explanation. -For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the 6[payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

Mere plain reading of the provisions show that there is difference between the Financial Debt and Operational Debt, Operational Debt means a claim in respect of the provisions of goods or services including employment or a debt in respect of the dues arising under any law for the time being in force comes under the definition of operational debt whereas the Financial debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes and the other conditions mentioned at Section 5 (8)(a to i).



Now it is the settled principle of law that National Company Law Tribunal is not recovery court rather when a default occurred financial creditor or operational creditor may file an application for initiating corporate insolvency resolution process and word default is defined U/S 3(12) of the IBC and same is quoted below:--

“ default means non payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be” and debt is defined U/S 3(11) of the IBC and same is quoted below:--

“ debt means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt”

If we shall read all the four definition together then we find, in order to trigger Section 7 IBC default means not only debt rather it includes the interest also , whereas in order to trigger Section 9 IBC default means debt only , like financial debt in the definition of operational debt interest is not included . Therefore, in view of Section 3(12)IBC so far operational debt as defined in Section 5(21) IBC is concerned default means a debt which is defined in Section 3(11)IBC and not the interest like financial debt.

At this juncture, we would also like to refer the arguments advanced on behalf of Operational Creditor, who placed reliance upon the decision of Hon’ble Delhi High Court in CS(OS) 1849/2015 decided on 30.05.2017 in the case of Vatech Global Co. Ltd. Vs. Unicorn Denmart Ltd & Ors and also the decision of Mumbai Bench, NCLT in CP No. 45/I & BP/NCLT/MAH/2017 decided on 10.04.2017 in the case of M/s DF Deutsche Forfait AG and Anr. Vs. M/s Uttam Galva Steel Ltd. and we find that so far the decision of Hon’ble Delhi High Court in CS(OS) 1849/2015 decided on 30.05.2017 in the case of

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Vatech Global Co. Ltd. Vs. Unicorn Denmart Ltd & Ors is concerned in that decision Section 5(21) of the IBC was not discussed, therefore, in our considered view, the facts of Hon'ble Delhi High Court decision is different from the facts of the case in hand, that would not help to Operational Creditor to substantiate its claim and so far the decision of Mumbai Bench, NCLT in CP No. 45/I & BP/NCLT/MAH/2017 decided on 10.04.2017 in the case of M/s DF Deutsche Forfait AG and Anr. Vs. M/s Uttam Galva Steel Ltd. is concerned, We have carefully gone through that decision and we find that in para 76, of the order, the matter was discussed by the NCLT, Mumbai Bench and it is mentioned in that order that when we see the basis difference to financial debt and operational debt, it is clear the financial debt is money borrowed to repay on future date along with interest, here the money is lent for value addition to the money as agreed between the parties, whereas operational debt is normally based on an agreement to pay the goods or services. We further find thereafter, Mumbai Bench mentioned that it does not mean that interest cannot be claimed in the times to come, it is a normal practice that trade payables are payments deferred for a fixed time, if the party fails to repay within the fixed time, then interest will be claimed over operational debt as well, the same happened over here as well. The Corporate Debtor himself said in the written submissions that there is email dated April 10, 2014 from the Corporate Debtor in respect of payment of interest, since collaterals are Bills of exchange, even otherwise also, basing on collaterals entitled to interest at the rate of 18 per cent u/s 80 of the Negotiable Instruments Act. The difference in these two transactions is one given to get interest over the money; second transaction happens in business operations, in both the cases money is involved, as days go by after transaction, the time value of



money will be there. For that reason, it is nowhere said that the operational creditor is barred from claiming interest.

Mere plain reading of that decision shows that NCLT, Mumbai Bench, agreed that in the definition of Operational debt word interest is not mentioned whereas in the definition of financial debt word interest is mentioned and he further goes to say that even if it is not mentioned in operational debt then a person can claim the interest.

At this juncture, we would like to refer the decision of Hon'ble Supreme Court in the case of Natha Devi Vs. Radha Rani Gupta 2005 (2) SCC 271 in which Hon'ble Supreme Court in para 14 of the Judgment held that:-

“ it is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors.”

When we shall consider the decision of Hon'ble Mumbai Bench, NCLT in the light of aforesaid decision, then we find that NCLT, Mumbai Bench is not referred the decision of Hon'ble Supreme Court in the case of Natha Devi Vs. Radha Rani Gupta 2005 (2) SCC 271 at the time of discussing the difference between the Financial Debt and Operational Debt and also not considered the intention of legislature while passing the order.

As we have already referred the decision of Hon'ble Supreme Court in which Hon'ble Supreme Court held that courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not

be accepted except for compelling reasons such as obvious drafting errors.”

In the light of that decision when we shall consider the decision of NCLT Mumbai Bench and the case in hand then We are of the considered view that there is no drafting error in section 5(21), while defining the Operational debt rather the legislature clearly omit the word interest in the definition of operational debt for the purpose of default in order to trigger Section 9 IBC. If it had been the intention of legislature to add interest in the debt, then like definition of financial debt, it must be described in the definition of operational debt but it is omitted, therefore, it had never been the intention of legislature to include interest in the definition of operational debt. Hence, in view of aforesaid discussions we are of the considered view that we can always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.

For the reason discussed above and in view of decision of Hon'ble Supreme Court in the case of Natha Devi Vs. Radha Rani Gupta 2005 (2) SCC 271, we have no option but to hold that like definition of financial debt given in Section 5(8) of the IBC, word interest is not included in Section 5(21) of IBC I.e in the definition of operational debt, therefore, while calculating the default for the non-payment of debt in case of operational debt only the principal amount can be treated as a defaulted amount and not the interest amount .”

30. In the light of aforesaid findings given by us in Company Petition (IB) 1986/2019 in the case of Shitla Papers Pvt. Ltd., when we shall consider the claim of interest of applicant then we are of the considered view that since the applicant debt is an operational debt and applicant is operational creditor therefore, their claim of interest is not maintainable .

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The decisions upon which the petitioner has placed reliance under the facts and circumstances of this case and for the reasons discussed above are not applicable and that will not help the applicant to substantiate their claim. For the reasons discussed above, we are of the considered view that there is no force in the contention raised on behalf of Ld. Counsel for the applicant that the Resolution Professional has erred in law and on facts for not accepting the claim towards the cost of mould as well as towards the interest. Hence, we have no option but to reject the prayer of the applicant to direct the Resolution Professional to admit the claim of the applicant of Rs. 33,04,823.40/- towards mould cost and interest in addition to the admitted claim of Rs. 75, 62,720/.

31. Accordingly, it is therefore,

ORDERED

that the prayer of applicant to direct the Resolution Professional to admit the claim of the applicant of Rs. 33,04,823.40/- towards mould cost and interest in addition to the admitted claim of Rs. 75, 62,720/. is hereby rejected and the present application stands DISMISSED.



K. K. Vohra
(Member Technical)



Abni Ranjan Kumar Sinha
(Member Judicial)