IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Company Petition (IB) No. 169/KB/2024

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

<u>IN THE MATTER OF</u>:
Diamond Mela Jewels Limited

... Applicant/ Operational Creditor.

Versus

Manik Chand Jewellers & Sons Private Limited

... Respondent/ Corporate Debtor.

Date of Pronouncement: 22.08.2025.

<u>CORAM</u>:
SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
CMDE. SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

<u>APPEARANCE</u>:
<u>For the Operational Creditor</u>
Mr. Shaunak Mitra, Adv.
Ms. Rishika Goyal, Adv.

<u>For the Corporate Debtor</u>
Mr. Swatarup Banerjee, Adv.
Mr. Sailendra Tiwari, Adv.
Mr. Jayesh Choradia, Adv.
Ms. Muskan Jalan, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court congregated through a hybrid mode.

2. Heard the Learned Counsels for both parties.

3. The instant application is preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity "IBC" by the **Diamond Mela Jewels Limited,** hereinafter referred to as the **"Applicant"/ "Operational Creditor"** against, **Manik Chand Jewellers & Sons Private Limited** hereinafter referred to as **"Respondent" / "Corporate Debtor"** seeking direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution Process, (for brevity "CIRP") in respect of the Corporate Debtor.

4. ***Factual Matrix***

4.1 The Operational Creditor is engaged in the diamond and jewellery business and, between September and October 2022, supplied jewellery to the Corporate Debtor under five invoices aggregating to ₹1,27,73,411.

4.2 Against these supplies, the Corporate Debtor made part payments amounting to ₹35,00,000 (in four instalments between November 2022 and January 2024). After adjusting these payments, the Operational Creditor claimed that a sum of ₹97,66,009 was due towards the principal, along with interest of ₹12,78,636 at 15% p.a., bringing the total claim to ₹1,10,44,645.

4.3 The Operational Creditor issued a legal notice dated 14.08.2023 and a demand notice under Section 8 dated 15.09.2023, which remained unanswered. Consequently, the present Section 9 petition was filed on 01.02.2024.

4.4 The Corporate Debtor disputes the claim amount, stating that as on 31.01.2024, after adjusting all payments (including ₹5 lakh paid on 10.01.2024), only ₹92,66,009 was due. It further contends that there was no agreement for payment of interest and that interest cannot be added to cross the statutory threshold of ₹1 crore under Section 4 of the IBC.

5. *Applicant's submissions:*

5.1 The learned counsel for the Applicant submitted that the Corporate Debtor had approached the Operational Creditor in 2022 for supply of jewellery. Pursuant to this request, the Operational Creditor supplied goods under five invoices between September and October 2022, amounting in total to ₹1,27,73,411.

5.2 It was contended that the Corporate Debtor accepted delivery of the goods without raising any dispute. Out of the total value, payments aggregating to ₹35,00,000 were made, leaving a balance principal outstanding of ₹97,66,009.

5.3 It is claimed that interest at 15% per annum from the respective due dates of the invoices, amounting to ₹12,78,636. Together with the principal, the total claim stands at ₹1,10,44,645.

5.4 It is further submitted that several reminders were sent through meetings, telephone calls, and emails, followed by a legal notice dated 14.08.2023 and a demand notice under Section 8 dated 15.09.2023. Despite receipt of the notices, the Corporate Debtor failed to make payment.

5.5 It is claimed that the debt is undisputed and is supported by confirmation of accounts given by the Corporate Debtor for FY 2022–23. The Applicant therefore urged the Bench to admit the petition under Section 9 and commence CIRP.

6. ***Submissions per contra made by the Respondent:***

6.1 The learned counsel for the Respondent argued that the petition is frivolous and inflated solely to meet the statutory threshold of ₹1 crore under Section 4 of the Code.

6.2 It was submitted that after adjusting all payments, including ₹5,00,000 paid on 10.01.2024, the principal outstanding as on 31.01.2024 is only ₹92,66,009, which falls below the threshold limit.

6.3 The Respondent contended that there was no agreement oral or written for payment of interest. The invoices do not mention any payment date or interest clause. Hence, the claim for ₹12,78,636 towards interest is unsustainable and cannot be used to cross the statutory limit.

6.4 Reliance was placed on ***Steel India v. Theme Developers Pvt. Ltd. and Bajrang Steel Trading Company (India) Pvt. Ltd. v. Ramkrishna Engineering Pvt. Ltd.,*** to contend that interest can only be claimed if contractually agreed.

6.5 It was further submitted that the invoices stipulate Mumbai jurisdiction and that the Applicant failed to file a rejoinder despite taking time under order dated 18.12.2024. The Respondent urged that the petition is a misuse of Section 9 proceedings as a recovery tool and should be dismissed with costs.

7. ***Analysis and Findings***

7.1 The admitted principal outstanding, after adjusting all payments including ₹5,00,000 paid on 10.01.2024, is ₹92,66,009 as on 31.01.2024. This amount falls below the statutory threshold of ₹1 crore prescribed under Section 4 of the IBC. It is well-settled that for the purpose of determining maintainability under Section 9, the threshold limit is to be assessed on the date of filing of the application, not on the date when the debt first became due.

7.2 The Operational Creditor has claimed ₹12,78,636 as interest at 15% p.a. However, no written agreement, contract, or contemporaneous correspondence evidencing agreement to pay interest has been produced. On this issue we rely on NCLT Kolkata bench judgement In ***Gandhar Oil Refinery (India) Limited v. City Oil Private Limited*** where it has been inter-alia held that :

> *"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."*

7.3 In Steel India v. Theme Developers Pvt. Ltd. and **in Bajrang Steel Trading Company (India) Pvt. Ltd.,** Reported in ibclaw.in 409 NCLAT has held that:

> *"It is settled that the charging of interest , ought to be an actionable claim, enforceable under law, provided it was properly agreed upon between the parties."*

(Emphasis added)

7.4 Further, as observed in the landmark judgement by NCLAT in **Krishna Enterprises Vs Gammon India Ltd Company** Reported **[2018] ibclaw.in 46 NCLAT** wherein it was held that

> "4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. <u>If in terms of any agreement interest is payable to the Operational or Financial Creditor, then debt will include interest, otherwise, the principal amount is to be treated as the debt</u> which is the liability in respect of the claim which can be made from the Corporate Debtor".

(Emphasis supplied)

Furthermore, in the case of **Khatunaresh Impex Pvt. Ltd v. Jindal (India) Limited** Reported in **(2022) ibclaw.in 950 NCLT** wherein it was held that in <u>absence of any contract or agreement between Parties which provides for payment of interest to the Operational Creditor cannot claim interest in Section 9 proceedings merely to cross the threshold limit of Rs. One Crore</u>.

(Emphasis supplied)

7.5 The Corporate Debtor has produced its bank statement showing payment of ₹5 lakh on 10.01.2024, which is not reflected in the petitioner's computation. The affidavit filed by the Operational Creditor denies receipt of any amount towards the claim, which is contrary to the record. Such omission, whether deliberate or inadvertent, materially affects the computation and the maintainability of the petition.

8. In view of the foregoing discussion, this Adjudicating Authority is of the considered opinion that there is no merit in this case and accordingly Company Petition (IB) No. 169/KB/2024 is **dismissed.**

9. Certified copies of the order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Cmde Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on 22nd Day of August 2025.

Tiwari, V. (LRA)