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

CP (IB) No. 190/Chd/Hp/2019
Under Section 9 of Insolvency and Bankruptcy Code, 2016.

<u>In the matter of:</u>

Craftsman Automation Limited,
Having registered office at,
"Senthel Towers", IV Floor, 1078
Avanashi Road,
Coimbatore - 641018 …Applicant/Operational Creditor

Vs.

Inox Wind Limited
(Through its Managing Director)
Having its registered office at:
Plot No.1,Khasra Nos. 264 to 267,
Industrial Area Village, Basal Una,
Himachal Pradesh- 174303

…Respondent-Corporate Debtor

Judgement delivered on: 11.12.2023

Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)

For the Petitioner-Operational Creditor : Mr. Shivam Narang, Advocate

For the Respondent-Corporate Debtor : Mr. Anand Chhibbar, Senior Advocate with Mr. Rajat Khanna and Mr. Vishal Saini, Advocates

<u>Per:</u> **<u>Harnam Singh Thakur, Member (Judicial)</u>**
<u>Subrata Kumar Dash, Member (Technical)</u>

JUDGMENT

The present petition has been filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Mr. G. Sivakumar, Chief Financial Officer,** of **Craftsman Automation Limited,** (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate the Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Inox Wind Ltd (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The corporate debtor, namely, M/s Inox Wind Ltd., is a company incorporated on April 9, 2009, under the provisions of the Companies Act, 1956, with CIN No. L31901HP2009PLC031083 with its registered office at Plot No. 1, Khasra Nos. 264 to 267, Industrial Area Village Basal, UNA Himachal Pradesh, -174303. Hence, the territorial jurisdiction lies with this adjudicating authority. A copy of master data of the corporate debtor is attached to the main petition and marked as Annexure 1.

3. The facts of the case, as briefly stated in the petition, are:

3.1. The corporate debtor is a manufacturer of wind operated electricity generators, for which they had placed orders as per the attachment for electric chain hoists. The operational creditor had supplied the items vide invoices as per Annexure 4 of the application, wherein the corporate debtor failed to make payment on due date. A demand notice was issued by the operational creditor, dated September 22, 2019, for claiming the amount of Rs. 1,39,83,557/- which was duly delivered to the corporate debtor on September 27th, 2019.

3.2. No reply was received from the corporate debtor, and the operational creditor discovered that some of the invoices had not attained their due date and sent a revised demand notice dated February 7, 2019 to the corporate debtor, claiming the amount of Rs. 84,70,878/-. The revised notice was issued without prejudice to their right to claim the amount stated in the previous demand notice dated September 22, 2019 as soon as few of those invoices stated in the demand notice attained the due date for payment from the corporate debtor.

3.3. Irrespective of the receipt of demand notice, the corporate debtor has failed to repay the unpaid operational debt as specified in the demand notice, nor has it issued any dispute notice within 10 days from the date of receipt of the notice.

3.4. The corporate debtor acknowledged the payment due from them and provided the schedule of payment in the email dated May 18, 2018 and issued a cheque for Rs. 30,00,000 dated August 16, 2018, which was bounced. The entire amount claimed by the operational creditor is Rs. 84,70,878/- (principal amount of Rs. 70,07,360/- as well as the interest @18% amounting to Rs. 14,63,518/-).

4. The corporate debtor, in its reply filed via diary no. 00580/4 dated April 19, 2023 through its **Director, Mr. Mukesh Manglik**, duly authorised vide Board Resolution dated 24.09.2021 (annexed as Annexure R-1), submitted that it is an admitted fact that the alleged entire principal amount, i.e., Rs.70,07,360/- stands paid, and the same has been admitted by the applicant before this adjudicating authority (order dated August 18, 2022), and the present application under Section 9 of the Code has been kept pending by the operational creditor for the recovery of the alleged

interest amount (@18% p.a.), i.e., Rs.14,63,518/-. Hence, the present petition under Section 9 of the Code is not maintainable as the spirit of the legislation of the Code is for 'Resolution of Debt' and not 'Recovery'. Therefore, the present petition, being non-maintainable, deserves to be dismissed on this ground alone.

4.1. The corporate debtor asserts that in accordance with Clause 14 of the Purchase Order, which pertains to the "Payment Terms" (Additional Schedule 4, page 17; Applicable Schedule 24, page 24 of the application), the parties have unequivocally agreed that no interest shall be charged after the due date. Additionally, all decisions regarding the subject matter of the Purchase Order are governed by Clause 24 of the Purchase Order, which states, "Entire Agreement." This clause specifies that the purchase order represents the complete agreement between the parties and supersedes any prior understanding or agreement pertaining to the subject matter.

4.2. It was further argued that the operational creditor is legally precluded from initiating a "CIRP" on the basis of non-payment of interest on the purported "Operational Debt" in the absence of such a provision, namely "Payment of Interest." Furthermore, the operational creditor's claim of alleged interest is untenable under the law, particularly since the purported "principal amount" has been paid in full. Thus, it was submitted that the non-payment of alleged interest amount cannot give rise to CIRP under the Code.

4.3. The corporate debtor also submitted that the operational creditor has raised four invoices dated 24.01.2017, 24.01.2017, 28.03.2017 and 28.03.2017 respectively **(Annexure-4 at Pg 17; Relevant at Pgs. 17,29, 30 and 31 of the**

Petition). In view of these invoices corporate debtor highlighted that from the bare perusal of the above mentioned invoices, it can be clearly ascertained that the alleged terms related to interest component, especially as claimed by the operational creditor, are not mentioned in the above-mentioned invoices & no term(s) qua *'delayed payment interest@18%* p.a.', as allegedly claimed by the operational creditor on the alleged delayed payment, have been incorporated in the above-mentioned Invoices and mentioned that it is a settled law that interest cannot be awarded merely on the basis of a term in a bill or Invoice, unless the operational creditor proves that such provision is based on a contract or agreement on the part of the purchaser to pay interest.

4.4. The corporate debtor further submitted that in the email dated July 21, 2017 **(Annexure-9 at Pg. 91 of the Petition),** issued by the operational creditor, the alleged 'outstanding amount as on July 11, 2017' was stated by the operational creditor, but no component qua the interest was mentioned.

4.5. The operational creditor in point 2 para IV of the Petition stated that a cheque dated August 16, 2018 issued by the corporate debtor, bounced for insufficient funds, which amounts to an admission on part of the operational creditor that there is a pre-existing dispute between the parties.

4.6. It is submitted by the corporate debtor that the declared standalone net worth of the corporate debtor is approximately INR 2238 crore; thus, being a solvent company, the relevant pages of the consolidated balance sheet of Inox Wind is annexed as **Annexure R-2.** It is clear from the financial reports of Inox

Wind that it has sufficient assets to meet its indebtedness and is a solvent company with a high net worth.

4.7. The corporate debtor has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of ***'SS Engineers v. Hindustan Petroleum Corporation Ltd., Civil Appeal No. 4583/2022, Judgment dated 15.07.2022 [2022 (234) Comp Cas 95]'***

5. The operational creditor, in its rejoinder filed vide diary no. 580/5 dated July 28, 2023, stated that the corporate debtor's right to file a reply was forfeited by this adjudicating authority vide orders dated January 17, 2022 and April 26, 2022, respectively. (Annexed as Annexure R1 of the rejoinder.). However, the same was taken on record vide order dated 28.04.2023, after the principal amount was paid by the corporate debtor.

5.1. The operational creditor submitted that the corporate debtor has failed to meet its lawful liabilities. The present petition was filed for the invoices bearing No. 1317121364 and 1317121365 dated March 28, 2017, and invoices No. 1317121395 and 1317121396 dated March 28, 2017, amounting to Rs. 84,70,878/-. Subsequent to that, during the pendency of the present Section 9 proceedings, three invoices bearing no. 1318909809 dated October 14, 2017, 1319102816 dated May 8, 2018, and 1319108456 dated July 12, 2018, amounting to Rs. 89,94,873/- (Rs. 56,24,140/- towards the principal amount plus Rs. 33,70,733/- towards interest as on July 6, 2023) had matured, and the corporate debtor has failed to meet that liability as well.

5.2. The corporate debtor has failed to pay the part payment of Rs. 30,00,000/- on or before December 25, 2021, as per order dated November 21, 2021, and hence, the operational creditor has denied the settlement proposal of the corporate debtor recorded in the order dated January 17, 2023.

5.3. The operational creditor submitted that the co-joint reading of Clause 14 'Payment terms' and Clause 9 'Liquidate damages for late delivery' of the Purchase Order stipulates that if the corporate debtor/purchaser fails to pay the payment due after 60 days from the dispatch, there shall be default interest payable in accordance with the statutory provisions. The said clause does not quantify at what amount the interest shall be imposed/charged, the reference must be drawn from the liquidated damages clause, wherein the corporate debtor shall charge interest @1.5 percent per week, meaning thereby 6 percent per month or 72 percent per annum.

5.4. The operational creditor referred to Section 3 of The Interest Act, 1978, which states that in any proceedings in which a claim for interest in respect of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest. As per Section 2(a), "Court" includes a tribunal and an arbitrator.

6. The operational creditor, vide its written submissions filed vide diary no. 580/2 dated May 19, 2022, submitted that the corporate debtor had failed to respond to the

demand notice within the prescribed time and had not brought to the knowledge of the operational creditor any existence of dispute. No notice of dispute was received by the applicant, and the respective affidavit as per Section 9(3)(b) is enclosed as Annexure 11 at page 105.

6.1. It was also submitted that the claim is within the limitation period as the claim became due on March 25, 2017, the demand notice was sent on September 22, 2019, and the application was filed on April 9, 2019. The interest computation sheet is enclosed as Annexure 5 on Page 43.

7. The corporate debtor, in its written submissions dated November 16, 2022, referred to the definition of operational debt under the Code, where the word 'interest' has not been mentioned, on the basis of which the operational creditor is barred from claiming the same under 'Operational Debt'.

8. We have heard the learned counsel for the petitioner as well as corporate debtor and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 was properly served. Form 3, along with the proof of dispatch and the tracking reports, are attached as Page No.15-20 of the main petition. It is seen from the tracking reports that the demand notice was duly served at the registered address of the corporate debtor.

10. The next issue for consideration is whether this application is filed within the limitation period. The period of limitation would begin from the date of default, i.e., the last date for making payment of the purchase order, which is May 27, 2017. This

application was filed vide Diary No. 1823 on April 9, 2019. Therefore, this adjudicating authority finds that this application is filed within limitation.

11. The other issue for consideration is whether the operational debt was disputed by the corporate debtor. It is submitted by the applicant that no notice of the existence of a dispute has been received by the operational creditor. It is deposed by way of affidavit (annexed as Annexure-11 to the petition) that in terms of Section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016, there was no notice given by the corporate debtor to dispute the unpaid operational debt in relation to the demand notice dated February 7, 2019 and the present application. No dispute had been pending in any court of law or Arbitral Tribunal, regarding the present claim of debt. Therefore, the operational debt was not disputed by the corporate debtor.

12. During the pendency of this case, the corporate debtor has paid the principal amount, which is not disputed by the operational creditor. The only dispute left is with regard to the payment of the interest component on the above-mentioned principal amount to the petitioner. The amount of interest claimed is Rs. 14,63,518/-. It is argued by the corporate debtor that there is no agreement with regard to the interest and the invoices are also not signed by the corporate debtor, wherein the condition of paying the interest is mentioned.

13. During the course of arguments, Ld. Counsel for the petitioner has placed reliance on the following judgments:

(a) ***Dushyant N. Dalal v. Securities and Exchange Board of India, AIR 2018 SC 447; 2017-9 SCC 660,*** wherein the Hon'ble Supreme Court held that the Interest Act of 1978 enables the courts and tribunals to award interest 'in equity'.

(b) Another judgment referred by the Operational Creditor to support his contention is ***D.F. Deutsche Forfait AG v. Uttam Galva Steel Ltd.*** wherein the Hon'ble NCLAT formulated a view that there is some time value of money for an "operational debt" as goods or services are supplied against money as considered. It was also observed that It is not expected that delays in payments of consideration beyond time is left unchanged. Further, the Tribunal held that if a party fails to repay within a fixed time, interest can be claimed over an operational debt as well.

(c) In the case of ***Prashant Aggarwal v. Vikash Parasrampuria,*** the Hon'ble NCLAT held that the total amount of debt includes principal and interest.

(d) ***Jawahar Lal Luthra vs. Ganesh Rice and General Industries and Another, 2019 SCC Online NCLAT 1125*** dated September 25, 2019, the Hon'ble NCLAT held that "A cheque issued by the CD against the debt amount claimed by the creditor amounts to admission of debt by the CD and therefore is not subject to dispute under the Code."

(e) *In* ***Ahluwalia Contracts (India) Limited vs. Raheja Developers Limited, 2019 SCC Online NCLAT 942*** dated July 23, 2019 the Hon'ble NCLAT referred to the Mobilox case and held that "if it comes to the notice of the adjudicating authority that the 'operational debt' is exceeding Rs. 1 lakh and the application shows that the aforesaid debt is due and payable and has not been paid. In such a case, in the absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid 'operational debt', the application under Section 9 cannot be rejected and is required to be admitted.

14. On the other hand, Ld. counsel for the corporate debtor has also placed reliance on the judgment of:

(i) ***Wanbury Ltd. v. Panacea Biotech Ltd.***, in which NCLT, Chandigarh held that in the absence of an agreement stipulating "interest," interest is not chargeable. It was also observed that the IBC does not empower the adjudicating authority to impose interest on the parties, much less determine the rate of such interest.

(ii) ***Vitson Steel Corp (P) Ltd. v. Capacite Infraprojects Ltd.*** wherein NCLT, Mumbai expressed a similar opinion by holding that interest cannot be claimed as an "industry practice" on an operational debt.

(iii) ***Steel India v. Theme Developers (P) Ltd.***,- the Hon'ble NCLAT held that interest cannot be claimed if not agreed upon between the parties.

(iv) ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.*** - wherein the Supreme Court held that IBC is not intended to be a substitute for a recovery forum.

(v) ***Transmission Corporation of Andhra Pradesh Limited v. Equipment Conductors and Cables Limited, Civil Appeal No. 9597 of 2018,*** where the Hon'ble Supreme Court held that insolvency petitions are not recovery petitions under the IBC, 2016 and cannot be used as a mode of recovery.

(vi) ***Rohit Motawat Vs. Madhu Sharma Proprietor Hind Chem Corporation & Anr. Comp. App. (AT) (Ins) No. 1152 of 2022,*** in which the Hon'ble NCLAT held that when the principal amount has entirely been paid and the issue is only regarding to interest, the application under Section 9 of the Code is not maintainable as the spirit of the legislation of the Code is for 'resolution of debt' and not for 'recovery'.

5. After hearing both the parties and a careful perusal of records, we are of the considered view that CIRP cannot be initiated solely on the basis of claim of interest component. Principal amount stands paid as admitted by learned counsel for the respondent as well as clearly established from the record available. The perusal of Clause 14 "Payment Terms' of the purchase order and invoices annexed as Annexure 4, specifically provides that no interest shall be paid from the due date. The term 'default interest rate shall be in line with the statutory provisions' does not provide a specified amount of interest, to be paid in default. The same cannot be aligned with Clause 9, 'Liquidated damages for late delivery' to determine the rate of interest to be paid in case of a default in payment of the principal amount. The Ld. counsel for the respondent/corporate debtor has rightly placed reliance upon the authorities (supra) especially on the judgment involving the same issue passed by Hon'ble NCLAT in the case of ***Rohit Motawat Vs. Madhu Sharma Proprietor Hind Chem Corporation & Anr.*** (supra) dated 03.02.2023, wherein it has been held that:

> *"10. We have heard counsel for the parties and after perusal of record, are of the considered opinion that the impugned order is patently illegal and deserves to be set aside. The question which has been raised by the Appellant is hereby answered in favour of the Appellant in view of the decision taken by this Court in the case of 'S.S.Polymers' (Supra), 'Permali Wallace Pvt. Ltd.' (Supra) as well as the decision of the 'Hon'ble*

> *Karnataka High Court' in the case of 'Jyothi Limited' (Supra). Before parting, we are constrained to observe that the Adjudicating Authority has erred in not looking into the facts that the principal amount has entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable as the spirit of the legislation of the Code is for 'resolution of debt' and not for 'recovery'." (Emphasis Supplied)*

and in the case of ***M/s Oswal Cable Products vs. M/s. Jindal Speciality Textiles Limited, CP (IB) No. 186/Chd/Pb/2019*** and ***CP (IB) No. 187/Chd/Pb/2019,*** decided by this Bench, based on similar facts, dismissed the applications where the principal amount was paid by the corporate debtor, only interest component was disputed. Further, there was no agreement on the interest component, and the invoices were not signed. Thus, no interest is due and payable to the operational creditor.

17. The authorities (supra) in the cases of ***Dushyant N. Dalal v. Securities and Exchange Board of India, Prashant Agarwal vs. Vikash Parasrampurria & others, D.F. Deutsche Forfait AG v. Uttam Galva Steel Ltd., Jawahar Lal Luthra vs. Ganesh Rice and General Industries and Another,*** *and* ***Ahluwalia Contracts (India) Limited vs. Raheja Developers Limited,*** relied upon by the petitioner, are not applicable to the facts of the case as neither there is any agreement to the interest component nor invoices are signed.

18. In view of the authorities discussed above, the present petition is not maintainable for recovery of interest, which is otherwise also not due. In light of the

discussions foregoing and the reasons recorded hereinbefore, **CP (IB) No. 190/Chd/HP/2019 is dismissed** and stands disposed of accordingly.

Sd/-	Sd/-
(Subrata Kumar Dash)	**(Harnam Singh Thakur)**
Member (Technical)	**Member (Judicial)**

December 11, 2023
ASG