NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1.

C.P. (IB)/341(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **14.08.2025**

NAME OF THE PARTIES: **Jindal SMI Coated Products Limited**

Vs

Total Print Solutions Private Limited

Under Section 9 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//CS//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI
CP (IB) No. 341/MB/2025

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

Jindal SMI Coated Products Limited

[CIN No. U25209MH2021PLC387755]

Registered Office: 4-B-5, Gundecha Onclave, 4th Floor, Kherani Road B/H OLD Post Office, Sakinaka, Andheri, East, Mumbai- 400072.

… Applicant (Operational Creditor)

Vs.

Total Print Solutions Private Limited

[CIN: U22222MH2007PTC167986]

Registered Office: W-228 A, T.T.C. IND Area, Behind Reliance Silicon, Thane Belapur Road, Navi Mumbai, Maharashtra- 400709.

... Respondent (Corporate Debtor)

Pronounced On: 14.08.2025.

CORAM:

SHRI NILESH SHARMA, MEMBER (JUDICIAL).

SHRI SAMEER KAKAR, MEMBER (TECHNICAL).

Hearing: Hybrid.

Appearances:

Operational Creditor: Adv. Mr. Vishawjeet Singh & Adv. Ms. Janhavi Hirlekar

Corporate Debtor: Adv. Amir Arsiwala a/w. Adv. Ms. Ashwini Gawde & Adv. Mr. Raj Kapadia i/b ASR & Associates

ORDER

[PER*: *CORAM]

1. BACKGROUND

1.1 This Company Petition No. C.P. (IB) 341/MB/2025 (Application) was filed on 17.01.2025 under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('AA Rules') by Jindal SMI Coated Products Limited, the Operational Creditor (OC), for initiating Corporate Insolvency Resolution Process (CIRP) of Total Print Solutions Private Limited, the Corporate Debtor (CD)**.**

1.2 The total amount of default alleged is Rs. 1,57,27,642/- (Rupees One Crore Fifty-seven lakhs twenty-seven thousand six hundred and forty-two only) with includes principal amount of Rs. 94,02,912/- (Rupees Ninety-Four Lakhs Two Thousand and Twelve Only) and interest amount of Rs. 63,24,730/- (Rupees Sixty-Three Lakhs Twenty-Four Thousand Seven Hundred and Thirty Only).

1.3 As stated in Part IV of the application, the default occurred on **06.04.2022**.

2. **CASE OF THE OC:**

2.1 The Operational Creditor is a leading business house inter-alia engaged in the manufacturer of flexible packaging films, speciality films gummed paper and film self-adhesive sheets and rolls and other related products while the Corporate Debtor is a private limited company registered under the Company's Act, 1956, carrying on business of digital and flexographic printing.

2.2 It is submitted that the Corporate Debtor approached the Operational Creditor for supply of Gummed Adhesive Paper (hereinafter referred to as "goods") for printing.

2.3 Further, it is submitted that the Operational Creditor, in response to the demand and pursuant to the purchase orders issued by the Corporate Debtor, supplied the requested goods. Accordingly, the Operational Creditor raised multiple invoices for the goods delivered. These invoices were duly served upon the Corporate Debtor, thereby creating an obligation on the Corporate Debtor to make payment for the goods supplied, in accordance with the terms stipulated therein.

2.4 It is submitted that the mutually agreed terms were clearly and unambiguously set forth in the invoices, which were accepted by both parties. The invoices specifically provided that payment was due on the date of issuance, and in the event of delay, interest at the rate of 24% per annum would be payable if the invoice remained unpaid in full within 30 days from the date of issuance.

2.5 Thereafter, the Corporate Debtor, in accordance with the agreed terms and conditions, was contractually bound to settle the invoices on the date of issuance. Furthermore, as expressly stipulated in the invoices, in the event of default, the Corporate Debtor would incur interest liability at the rate of 24%

per annum, effective from the 30th day of issuance, on the outstanding amount, payable to the Operational Creditor.

2.6 It is submitted that notwithstanding its clear contractual obligation to make timely payment, the Corporate Debtor has wilfully defaulted in fulfilling its payment obligations. As a result, a substantial amount remains due and outstanding, arising directly from the unpaid invoices raised by the Operational Creditor.

2.7 Then the Corporate Debtor's failure to make timely payment on the undisputed invoices, thereby breaching the agreed terms, the Operational Creditor continued to supply goods relying on the explicit assurances provided by the Corporate Debtor that the outstanding dues would be settled promptly. However, despite multiple follow-ups, the Corporate Debtor has consistently failed and neglected to clear the amounts outstanding on the pending and unpaid invoices.

2.8 Despite repeated assurances, the Corporate Debtor failed to honour its undisputed payment obligations and has consistently shown an indifferent approach towards settling the outstanding dues.

2.9 It is submitted that the Operational Creditor maintains a ledger statement for all its business associates, including the Corporate Debtor. Due to the Corporate's Debtor failure to discharge its payment obligations within the agreed timeframe, invoices amounting to Rs. 94,04,912/-, along with interest of Rs. 63,24,730/- as on 31.10.2024, remain outstanding and unpaid.

2.10 It is further submitted that as mutually agreed, the Corporate Debtor was required to clear invoices on the date of issuance, failing which interest at 24% p.a. would apply if payment was not made within 30 days. This condition is clearly stated in the invoices. Due to non-payment, interest of Rs. 63,24,730/- has accrued on the unpaid principal amount.

2.11 The Operational Creditor had previously issued a demand notice dated 29.08.2023. In response, the Corporate Debtor proposed to resolve the outstanding debt by tendering payment of only the Principal amount of Rs. 94,02,912/-.

2.12 It is submitted that the Corporate Debtor issued various cheques to the Operational Creditor on various occasions for the payment towards the admitted operational debt and invoices raised.

2.13 It is further submitted that the Corporate Debtor wilfully issued cheques knowing they would be dishonoured, with intent to delay and obstruct proceedings under the IBC, 2016.

2.14 Further, the Operational Creditor lodged a complaint before the Metropolitan Magistrate against the Corporate Debtor under Section 138 of the Negotiable Instruments Act, 1881, on account of the dishonour of the cheques issued.

2.15 It is submitted that due to the outstanding debt and the Corporate Debtor's failure to comply with the settlement terms proposed in response to the demand notice dated 20.08.2023, the Operational Creditor issued a fresh demand notice date 11.11.2024, which was duly served upon the Corporate Debtor via email and speed post at the registered address of the Corporate Debtor. The Corporate Debtor did not reply to the said demand notice.

2.16 It is further submitted that the Corporate Debtor is in default of its payment obligations to the Operational Creditor. Its failure to pay the principal amount of Rs. 94,02,912/- along with interest of Rs. 63,24,730/-, despite repeated demands and assurances, amounts to a breach of contractual and statutory obligations.

2.17 It is submitted that the Operational Creditor has exercised due diligence by issuing demand notices, and has exhausted all reasonable efforts to amicably resolve the dispute due to non-compliance on part of the Corporate Debtor, issuance of dishonoured cheques and failure to respond to the demand notice dated 11.11.2024 shows deliberate intent of the Corporate Debtor to avoid payment of its undisputed debt.

2.18 As the operational debt remains in default despite issuance of the demand notice, the Operational Creditor is constrained to file the above-captioned application against the Corporate Debtor.

2.19 Applicant has attached following documents with the Application.

I. Copies of invoices raised by the Operational Creditor for the goods/material supplied from 06.04.2022 to 25.07.2022.

II. Copies of the demand notice dated 29.08.2023 and 08.11.2024.

III. Copies of the post-dated cheques along with return memo.

IV. Copy of the email dated 11.11.2024.

V. Copy of the ledger account of the Corporate Debtor in the books of Operational Creditor.

2.20 The Applicant has *vide* additional affidavit dated 26.03.2025 has placed following additional documents on record:

i. Copy of the Reply received to the Demand Notice dated 29.08.2023 wherein the CD acknowledges its defaults to wades the payment of the operational debt and sought time of 6 months to pay back the principal amount.

ii. Copy of the Scheme of Amalgamation of SMI Coated Products Pvt. Ltd. into Jindal Polypack Ltd. as approved by co-ordiante bench of this Tribunal.

iii. Copy of certificate of incorporation pursuant to the change of name from Jindal Polypack Ltd. to Jindal SMI Coated Products Ltd.

iv. Copy of NeSL Form-C -Record of financial information.

2.21 There was another additional affidavit dated 29.04.2025 filed by the applicant, vide which copy of NeSL Form-D – Record of default has been brought on record. The said Form-D states that the status of authentication of default is "Deemed to be Authenticated", date of default is 06.04.2022 and default amount is Rs. 1,57,27,642/-.

3. **REPLY BY THE CORPORATE DEBTOR:**

3.1 Reply was filed by the Corporate Debtor through affidavit dated 28.05.2025 which is affirmed by Mr. Rohit Raghunath Patil, Manager duly authorized by a resolution dated 24.03.2025.

3.2 It is submitted that the Corporate Debtor and the Operational Creditor have been engaged in a commercial business since prior to the year 2018. All the transactions between the parties were conducted in the ordinary course of business, governed by mutually agreed commercial terms.

3.3 It is submitted that the interest clause at 24% p.a. in the invoices is unilateral and was never mutually agreed between the parties, either orally or in writing. It is submitted that until year 2022, the Operational Creditor never raised any claim or demand for interest on delayed payments, despite prior instances of delayed settlements. Such consistent conduct clearly indicates that the interest clause was neither intended to be enforced nor treated as binding by the parties.

3.4 In view of the above, the Corporate Debtor had no occasion to object to the interest clause printed on the invoices, as it was never enforced or acted upon by the Operational Creditor.

3.5 Without prejudice to the foregoing, it is submitted that the admitted principal outstanding amount, even as per the Operational Creditor's own averments, is Rs. 94,02,911.77/-

3.6 It is submitted that there exists no agreement between the parties providing for interest on delayed payments. The interest clause was unilaterally inserted in the invoices and was never mutually agreed upon. Accordingly, only the principal amount of Rs. 94,02,911.77/- can be considered as the "debt" for the purpose of determining the maintainability of this Petition. As the principal amount is below the statutory threshold of Rs. 1crore, the Petition is not maintainable and is liable to be dismissed.

3.7 It is further submitted that the Operational Creditor has artificially inflated the claim by including interest of Rs. 63,24,730/- to reach the threshold under Section 4 of the IBC, 2016, thereby claiming a total defauly of Rs. 1,57,27,642/-. However, the principal amount of Rs. 94,02,912/- falls below the mandatory threshold of Rs. 1 crore, rendering the present Petition non-maintainable.

3.8 The Corporate Debtor submitted that without admitting any liability, and purely in good faith it is ready and willing to repay the admitted principal amount of Rs. 94,02,911.77/- and is in process of arranging the necessary funds. The

Corporate Debtor reiterates its bona fide intention to resolve the outstanding dues amicably, without the requirement of insolvency proceedings.

4. **REJOINDER BY THE APPLICANT/OPERATIONAL CREDITOR:**

4.1 The Corporate Debtor has not denied the existence of commercial relationship or the receipt of goods under the invoices raised by the Operational Creditor. The reply filed by the Corporate Debtor to the first Section 8 notice clearly acknowledges the transaction between the parties wherein the invoices are admitted. The Corporate Debtor while acknowledging the invoices offers its proposal to pay the principal amount. Further in the reply, the Corporate Debtor again offers payment of the principal sum of Rs. 94,02,912/-. The mere offer of principal amount payment cannot in any manner be said that claim of interest is legally untenable in the absence of any objection to the terms of invoices. Thus, in the present case there is a clear existence of admitted debt.

4.2 It is submitted that the sole ground on which the maintainability of the present petition is being challenged is the inclusion of interest in the computation of the default amount to meet the threshold prescribed under Section 4 of the IBC,2016. Such an objection is legally unsustainable and a mere afterthought to evade insolvency proceedings.

4.3 It is further submitted that the invoices raised by the Operational Creditor expressly stipulated interest @ 24% p.a. for non-payment within 30 days. This was not a standard form clause but an express term consistently incorporated in all transactions between the parties.

4.4 It is submitted that the Corporate Debtor never raised any objection to the said term and continued to receive goods and make partial payment against the invoices.

4.5 It is submitted that the Corporate Debtor's claim that the interest has been inflated to meet the Rs. 1 crore threshold is baseless. Interest has been calculated as per the 24% rate stipulated in the invoices. Detailed computation supported by ledger accounts and bank statements is on record and remains unrefuted.

4.6 The Applicant categorically denies the Corporate Debtor's claim that it is ready and willing to repay the admitted principal amount of Rs. 94,02,911.77/- and is arranging funds for amicable settlement. No discussions, negotiations, or communications regarding settlement have taken place between the parties, either subsequent to the demand notice dated 08.11.2024 or prior to the filing of the present petition before this Tribunal.

4.7 The Petitioner submits that, post issuance of the Demand Notice dated 29.08.2023, the Corporate Debtor issued post-dated cheques towards part payment of the admitted debt, which were dishonoured for insufficient funds, as shown in the bank return memos. This reinforces the default and belies the Corporate Debtor's claim of bona fide intent to settle.

4.8 It is submitted that the Corporate Debtor's failure to honour post-dated cheques, along with the absence of any settlement discussions, clearly reflects the inability and unwillingness to discharge the admitted debt of Rs. 1,57,27,642/-. The reply, including the unsubstantiated settlement offer, is a mere attempt to mislead this Tribunal to evade the rigours of the IBC, 2016.

4.9 The Petitioner submitted that the claim of the Corporate Debtor to settle amount is baseless and lacks factual or documentary support or evidence. Accordingly, the present petition is a clear case of existence of admitted debt and default.

5. **ANALYSIS AND FINDINGS**

5.1 We have perused all the documents and pleadings of both the parties, and heard both the Ld. Counsel for the OC and the CD.

5.2 The instant petition under Section 9 of the Code has been preferred by the Operational Creditor seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Operational Creditor has claimed a total amount of Rs. 1,57,27,642/- (Rupees One Crore Fifty-Seven Lakh Twenty-Seven Thousand Six Hundred and Forty-Two Only) as operational debt, out of which Rs.94,02,912/- (Rupees Ninety-Four Lakh Two Thousand nine hundred and Twelve Only) is the principal outstanding and Rs.63,24,730/- (Rupees Sixty-Three Lakhs Twenty-Four Thousand Seven Hundred and Thirty-Only) is claimed towards interest @ 24% p.a. for the alleged period of default. It is the case of the Operational Creditor that despite several demands and issuance of demand notice under Form 3, the Corporate Debtor failed to discharge the liability, warranting the initiation of CIRP.

5.3 However, on perusal of the documents placed on record, it is observed that a significant portion of the claimed amount pertains to interest allegedly levied by the Operational Creditor upon the principal dues.

5.4 Hence, the primary issue for consideration before this Adjudicating Authority is whether the amount of default, as claimed by the Operational Creditor, falls within the jurisdictional threshold limit prescribed under Section 4 of the

Insolvency and Bankruptcy Code, 2016, and more specifically, whether the interest component unilaterally charged by the Operational Creditor in the invoices can be reckoned as part of the "operational debt for the purpose of determining the threshold amount.

5.5 It is an admitted position that there exists no written agreement, contract, purchase order or correspondence between the parties wherein the Corporate Debtor has agreed to pay interest on delayed payments. It is noted that the Operational Creditor has failed to produce any formal or contractual agreement, or acknowledgment wherein the Corporate Debtor had expressly agreed to pay interest on the outstanding principal amount. There is no evidence of any acceptance or acknowledgment of such terms by the Corporate Debtor at the time of supply or in the course of subsequent correspondences. The invoices relied upon are unilateral in nature, and do not reflect acknowledgment or acceptance of any interest clause by the Corporate Debtor.

5.6 It is also pertinent to note that the Corporate Debtor has not, on any occasion made payment towards the interest component claimed in the invoices raised by the Operational Creditor. There is no documentary evidence placed on record to suggest that the Corporate Debtor has at any point in time either explicitly agreed to the levy of the interest or made any part payments towards such interest. The conduct of the Corporate Debtor throughout the course of the commercial relationship has been consistent and there is no indication either by way of payments or by written acknowledgement that the Corporate Debtor agreed to the imposition of interest.

5.7 The Corporate Debtor has relied on a number of judgments including the Judgement passed by Hon'ble NCLAT in the case of ***Aquarius H20 Pvt. Ltd.***

v. SLS Power Corporation Ltd. [Company Appeal (AT) (Insolvency) No. 1070 of 2022], wherein vide order dated 29.11.2024, it is held that where there is no written agreement or established course of dealings indicating acceptance of interest, the Operational Creditor cannot unilaterally impose interest and seek to cross the statutory threshold under Section 4 by including such interest. The relevant paras of the Judgement are produced hereunder:

"16.A pointed query was made by this Bench to the Appellant with respect to the fact that the Operational Creditor had claimed an outstanding amount of Rs. 1.17 Cr. and even if the purported payment of Rs. 11 lakhs by the Corporate Debtor is squared off, even then the outstanding amount would still be exceeding Rs. 1 Cr. In their defence, the Ld. Counsel for the Appellant submitted that the principal amount claimed has always been Rs. 1.01 Cr. However, the Operational Creditor has added Rs. 15 lakhs unilaterally towards interest liability. This amount has been added by the Operational creditor on their own and therefore needs to be disregarded. It was further asserted that the interest amount was not payable since there was no contract between the two parties which contemplated interest liability. Nor has the Corporate Debtor ever paid interest to the Operational Creditor in the past in relation to these transactions.

17. ***In the absence of provision of interest in the contract and no practice of interest payment having been demonstrated by the Operational Creditor****, we are inclined to agree with the Appellant that the Operational Creditor had tried to cleverly add interest liability to cross the Section 4 threshold criteria. If the payments made by the Corporate Debtor after 12.05.2023 are factorised, the debt due to the Operational Creditor was clearly below the prescribed minimum threshold limit of Rs. 1 Cr. and hence the Section 9 application of the Operational creditor was not maintainable. Triggering of CIRP in the present facts of the case where, prima-facie, the outstanding liability is below the threshold limit is unwarranted."*

5.8 Similarly, in another judgment cites by the CD i.e. in **SNJ Synthetics Ltd. v. PepsiCo India Holdings Pvt. Ltd.** [Company Appeal (AT) (Insolvency) No. 826 of 2022], the Hon'ble NCLAT has vide order dated 07.05.2025, reaffirmed that interest stipulated unilaterally in invoices cannot be included in computing the total default amount in the absence of contractual consent. Mere unilateral endorsement of interest on invoices is insufficient to constitute a legally recoverable claim under the Code unless supported by contract or unequivocal acknowledgment. The relevant para is as under:

> "12. *Since there has been no amendment of the Agreement, the terms agreed between the parties in the Supply Agreement prevail over unilateral invoices. Even though invoices can play a crucial role in defining the rights and obligations between parties, however, there has to be an element of mutual consent, which can be discernible from conduct. When the ingredient of levy of interest on delayed payment is, absent in the written contract, stipulation of interest payment in invoices can override the written contract only if there is mutual consent and mutual understanding between the parties in this regard which in the present case has not been demonstrated by conduct and practice. There is no evidence of payment of interest by the Respondent which has been substantiated by the Appellant. We are therefore inclined to agree with the Adjudicating Authority that unilaterally generated invoices signed by only one party cannot overrun or recast the terms of bi-partite agreements and create binding obligations on the other party to pay interest.*
>
> *13. In this regard attention has been adverted by the Respondent to the judgement of this Tribunal **in Krishna Enterprises vs. Gammon India Limited in CA (AT) (Ins) No. 144 of 2018** wherein it has been held therein that if no interest was payable, in terms of the contractual agreement, then only the principal amount would constitute the claim, basis which Section 9 application can be filed. We find the ratio of the*

above judgment to be squarely applicable to the facts of the present case and for easy reference reproduce the relevant portion of the said judgment as below:

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

5. In the present appeals, as we find that the principle amount has already been paid and as per agreement no interest was payable, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. If for delayed payment Appellants claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer."

(Emphasis supplied)

14. We also agree with the Adjudicating Authority that the facts of the present case are distinguishable from the ***Prashant Agarwal judgement supra*** *in view of the fact that in the present case the payment of interest clause on delayed payment does not figure in the Supply Agreement which was a bi-partite agreement. Moreover, the invoices basis which interest has been claimed by the Appellant in the present case were not even counter-signed by the Respondent thereby making the imposition of interest unilateral. There is nothing to substantiate that the Respondent has accepted the obligation to pay interest on delayed payment. Even the reliance placed on* ***Anju Sharma judgment supra*** *also does not come to the rescue of the Appellant as in that case also the Purchase Order containing interest clause on advance payment was issued basis a Distributorship Agreement which contained the terms of payment and delivery.*

………………………

16. In the given circumstances when the principal amount claimed by the Appellant has already been paid, we agree with the Adjudicating Authority that there was no legally enforceable unpaid operational debt as required under Section 9 (5) of IBC to trigger CIRP. We are also guided by the decision rendered by this Tribunal in case of ***S.S. Polymers Vs Kanodia Technoplast Limited in CA(AT)(Ins) No. 1227 of 2019*** *in which a similar issue had arisen and this Tribunal had held that claim of interest basis one-sided invoices cannot be the foundation for a Section 9 application. The relevant extracts of the judgment is as reproduced below:*

"3. The adjudicating authority has noticed that a sum of Rs. 25,00,000/- out of Rs. 32,71,800/- was paid to the Appellant by 31st December, 2018 through RTGS(s). The remaining amount of Rs. 7,71,800/- was also paid by 'Corporate Debtor' to the Applicant by 17th January, 2019 through NEFT(s). The said amounts were paid before the admission of the application under Section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under Section 9 of the I&B Code for a sum of Rs. 2,16,155/- towards interest. In these background, the Adjudicating Authority observed that in the absence of any agreement, no such amount can be claimed.

4. The Learned Counsel for the Appellant relied on 'Invoices' to suggest that in the 'Invoices', the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the Corporate Debtor'

5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the

Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which is barred in view of Section 65 of the I&B Code.

6. We find no merit in this Appeal and it is accordingly dismissed."

(Emphasis supplied)

5.9 The Operational Creditor has sought to rely on the judgment of ***Prashant Agarwal v. Vikas Parampuria [Company Appeal (AT) (Insolvency) No. 677 of 2022]***, wherein Hon'ble NCLAT vide order dated 15.07.2022 has held that interest which is clearly stipulated in the invoices is permitted to be included in the computation of the operational debt for the purpose of admission of an application under Section 9 of the IBC. The relevant portion of the said judgment is reproduced hereunder:

"……..

(iv) We have also noted that Adjudicating Authority has also referred one Judgment of this Tribunal i.e. Pavan Enterprises v. Gammon India while allowing interest on delayed payment to be part of total debt for calculation of minimum threshold limit for Section 4 of IBC in the Impugned Order itself (at Page – 22 of the 'Memo of Appeal', Volume-I)

"(f)…..

judgment dated 27th July 2018 in Company Appeal No. 148 of 2018 in Pavan Enterprises v. Gammon India, wherein the NCLAT has held that "If in terms of any agreement interest is payable to the Operational or Financial Creditor then the debt will include interest".

In this context, as discussed above, all 9 invoices clearly stipulated provision of Interest on delayed payment. It is also observed that payments of three invoices has been made in full and for one invoice in part against said invoices by CD and *no dispute on this clause was ever raised as noted from record available before us.*

(v) Before coming to any conclusion, it will also be pertinent to go through legal definition of debt. The definition of debt as per section 3 (11) of IBC is as under:-

3 (11) *"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".*

Since, the word "claim" is mention in definition of debt in Section 3 (11) "debt" in Section 3(11) we need to refer to definition of claim under Section 3(6) of IBC which is as follows:-

"3.(6) "claim" means

(a) A right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured:

(vi) It is, therefore, clear from these facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself. It is noted that the total principal debt amount of Rs. 97,87,220/- along with interest the total debt makes total outstanding as Rs. 1,60,87,838/-. Thus, the total debt outstanding of OC is above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O. 1205 (E) dated 24.03.2020 (Supra), and meets the criteria of Rs. 1 crore as per Section 4 of IBC and Application is therefore maintainable in present case.

We concur with the orders of Adjudicating Authority on this issue also.

(vii) We, therefore, do not find any merit in the present appeal and dismiss the same.

5.10 We have considered the above judgments cited by both the parties i.e. the Applicant as well as the Respondent. The Applicant has mainly relied upon the judgment issued by the three members bench of Hon'ble NCLAT in the matter of **Prashant Agrawal, dated 15.07.2022**, which states that for maintainability of claim the principal debt amount as well as interest on delayed payment, which is clearly stipulated in the invoices, will be included and in case the total debt including said interest meets the threshold of Rs. 1 crore, the Application under Section 9 shall be maintainable. However, the three members Bench of Hon'ble NCLAT in SNJ Synthetics matter (supra) vide order dated 07.05.2025 has held that though invoices can play a crucial role in defining the rights and obligations between parties, however, there has to be an element of mutual consent, which can be discernible from conduct. In the present case though the applicant has against clause 1 of Part-IV of the Application in para 2 referred to the purchase orders issued by the CD, however, no such purchase orders have been attached along with the Application. The relevant portion of the said para 2 is reproduced hereunder:

" 2. That the Operational Creditor, in response to the demand and pursuant to the purchase order issued by the CD supplied the requested goods. ………."

5.11 As such, the applicant has failed to produce any agreement or purchase order, which stipulate the obligation of the CD to pay interest as claimed by the

Applicant and its claim is totally based on the clause mention in the invoices for payment of interest @ 24% p.a. if the bills are not paid within 30 days.

5.12 The said unilateral mentioning of the interest rate on the invoices with no evidence attached to the Application as to acceptance of the said obligation by the CD does not create any legal obligation on the CD for payment of the interest. The same is based on the judgments cited by the CD as referred to above and also the following recent judgments passed by three members Bench of Hon'ble NCLAT:

i. **Rishabh Infra v. Sadbhav Engineering Ltd**, [(2024) ibclaw.in 707] wherein vide order dated 04.11.2024, it was held as below:

> *"9. we are of the view that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest.*
> *10. There is nothing to substantiate that the Corporate Debtor has accepted the obligation to pay the interest @24% per month, as claimed by the Operational Creditor. The entire Principal Amount having been paid, the Adjudicating Authority did not commit any error in rejecting the Section 9 Application filed by the Operational Creditor. There is no merit in the Appeal."*

ii. **Shitanshu Bipin Vora v. Shree Hari Yarns Pvt. Ltd. And Mr. Rajan Garg in Company Appeal (AT) (Insolvency) No. 2204 of 2024**, in which vide order dated 16.04.2025, it was held as below:

"46. The Respondent has also relied upon the judgment of this Tribunal in ***Prashant Agarwal Vs. Vikash Parasrampuria & Anr. In Company Appeal (AT)(Insolvency) No. 690 of 2022 decided on15.07.2022,*** *wherein this Tribunal has held that the*

total amount which includes both principal debt and interest on delayed payment as was stipulated in the invoices itself will become the total debt outstanding as per the requirements of Section 4 IBC in a Section 9 Application. The facts of each case are different. We note contrasting judgments relied upon by the Respondent. The Appellant has relied upon the Judgment of this Tribunal in ***Rishabh Infra Through Hari Mohan Gupta Vs. Sadbhav Engineering Ltd in Company Appeal (AT) (Insolvency) No. 1881 of 2024 decided on 04.11.2024,*** *wherein this Tribunal has held that in the view that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest at para 9,. On this basis, this Tribunal has not accepted claim of the Operational Creditor for claiming interest in a Section 9 Application filed by the Operational Creditor.*

47. Similarly, the Appellate Tribunal in the case of ***SS polymers vs Kanodia Technoplast Limited,*** *had held that relying on the invoices to raise claims for payment of interest is against the principle of the Code. Relevant extracts from this judgment are reproduced hereinbelow:*

"4 The Learned Counsel for the appellant relied on 'invoices' to suggest that in the 'invoices,' the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'.

5. Admittedly, before the admission of an application under Section 9 of the Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the Code, as it should be treated to be an application pursued by *the Applicant with malicious intent (to realise only Interest for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which is barred in view of Section 65 of the Code."*

(emphasis supplied)

48. The Appellant has relied upon the judgments of this Appellate Tribunal in ***Krishna Enterprises vs. Gammon India Ltd [supra]*** *wherein vide order dated 27.07.2018 it was held that 'debt' in terms of the Code does not include interest, unless payable in terms of any agreement among parties. The relevant extract of the judgment passed by the Appellate Tribunal is reproduced below:*

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

(emphasis supplied)

……………………………

51. In the above background, we find that the claim of the Operational Creditor with respect to the interest is not maintainable and, in that situation, the claim does not meet the threshold for admitting Section 9 Application ………………"

5.13 In regard to the above, it is relevant here to state in case of conflicting judgements by Benches of equal strength, the later will prevail over the earlier. It is settled law that in the case of conflicting judgments of co-equal Benches, the later judgement will prevail. The Hon'ble Karnataka High Court in D.V. Lakshmana Rao v. State of Karnataka & Ors. in Writ Petition No. 25795 of 2000, has held as below:

“14. It is now well settled that if there are two conflicting judgment of the Supreme Court, of benches with equal number of Judges, then the later will prevail over the earlier…”

5.14 The above two judgments, which are subsequent to the Prashant Agrawal Judgment (supra) relied upon by the Applicant and are also delivered by three Members Bench of Hon’ble NCLAT, clearly state that invoices containing the term of interest cannot be operated against the CD unless there is an agreement for interest or any other documents showing that the CD has accepted the obligation for interest. The Shitanshu Bipin Vora judgement has also considered the judgement in Prashant Agrawal matter and after considering the same the above stated legal position has been held by Hon’ble NCLAT.

5.15 We have also noticed that the account statement of the CD in the books of account of the Applicant as attached on page No. 125 of the Application reflects that the outstanding invoices remaining unpaid belong to the period starting from 06.04.2022 till 25.07.2022, however no provision for interest has been made in the account till 01.07.2023. The interest provision was made by the CD only on and after 01.07.2023, in spite of the fact that the default had taken place w.e.f. April, 2022 onwards.

5.16 It is further noted that first Demand Notice in Form-3 (attached on page 53 of the Application) was issued by the Applicant on 29.08.2023 and that the provision in respect of interest has been made on 01.07.2023 to the extent of Rs. 27.57 lakh for the period up to 31.05.2023 and of Rs. 4.45 lakh for the months of June and July, 2023. The same appears to be made in order to enable the OC to meet the threshold of Rs. 1 crore to be able to issue notice under section 8 and file an application under section 9 of the IBC. Had the said interest provision not been made, the principal outstanding amounting to Rs. 94.02 Lakh would not have met the said threshold.

5.17 In light of the above legal precedents and upon analysing the claim of the Operational Creditor, it is evident that the principal amount of the alleged default is below the mandatory threshold limit of Rs. One Crore as prescribed under Section 4 of the Code. The interest component having been unilaterally imposed without any contractual agreement or written acknowledgment cannot be included for the purpose of determining the total debt amount. Therefore, the claim, to the extent it exceeds the principal amount, is not legally sustainable under the provisions of the Code.

5.18 Accordingly, this Adjudicating Authority holds that the petition under Section 9 of the Code is not maintainable as the principal operational debt falls below the prescribed threshold limit and the Operational Creditor has failed to establish any legal or contractual entitlement to interest, as required under law. The petition is thus liable to be dismissed on this ground alone.

5.19 **Accordingly, CP (IB)/341(MB)2025 stands dismissed**. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
Sameer Kakar
Member (Technical)

Sd/-
Nilesh Sharma
Member (Judicial)

//CS & SS//