

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

**CP (IB) No. 21/Chd/HP/2020**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016.**

**In the matter of:**

**M/s Windar Renewable Energy Private Limited**

Having Its Regd. Office at

3 B, GIDC Phase III, Halol Industrial Estate

Panchmahal Halol, Gujarat - 389350

E : [kbharathy@windar-renovables.com](mailto:kbharathy@windar-renovables.com)

CIN : U74999GJ2010PTC081993

...Operational Creditor

Vs.

**M/s Inox Wind Ltd.**

Having its registered office at

Plot No. 1, Khasra Nos. 264 to 267,

Industrial Area Village Basal UNA

Himachal Pradesh -174303

E : [investors.iwl@inoxwind.com](mailto:investors.iwl@inoxwind.com)

CIN No. L31901HP2009PLC031083

...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. Vishav Bharti Gupta, Advocate.

For the Respondent-

Corporate Debtor : Mr. Anand Chibbar Seniorr.Advocate with Mr. Vishal Saini and Mr. Rajat Khanna Advocates

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

### **JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Bharathy Krishnaswamy whole time director of M/s Windar Renewable Energy Private Limited, (for brevity 'Operational Creditor' / 'Petitioner')**, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in 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 09.04.2009 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. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure 2.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor's entire claim amount is Rs. 3,19,78,886 /- inclusive of the principal amount as well as the interest @18%. Therefore, the corporate debtor cannot bifurcate the payment by only making payment of the principal amount based on his whims and wishes and further, the Corporate Debtor has failed and neglected to pay the entire claim amount which includes the interest part along with the principal amount. The Purchase Orders clause of 18% interest is also mentioned. It is stated by petitioner that the entire claim amount of this petition is principal amount as

well as the interest accrued thereon and the Corporate Debtor is liable to pay the same to the fullest. In addition to this, as per **Section 61 of the Sales of Goods Act, 1930** it can be observed that the seller can only recover interest when he is in a position to recover the claim amount and as per petitioner it is an admitted fact that the Corporate Debtor has sought time from this Hon'ble Tribunal from time to time and has made part-payment to the Operational Creditor. Therefore, in the present case, the operational creditor is entitled to the claim amount which includes the claim amount i.e. the principal amount and the interest. Furthermore, as per **Section 34 of the Code of Civil procedure, 1908 (C.P.C.)**, it can be observed that the Hon'ble Tribunal may order interest at such rate as the Tribunal deems reasonable. It is also submitted by the petitioner that the matter of ***D.F Deutsche Forfait AG V. Uttam Galva Steel Ltd.*** 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.

As per the petitioner the part payment of claim amount has been made by the Corporate debtor, so it is evident that the Corporate Debtor admits their liability for the payment of the legal due amount. Thus, the Corporate Debtor is liable to make payment of the entire claim amount which includes the interest part and only the part payment of claim amount is not sufficient relief as prayed for in this company petition. Therefore, the Corporate debtor not paying the entire claim amount is a clear non-compliance of earlier order passed by this Hon'ble Tribunal for making payment of claim amount and this makes it clear that the Corporate Debtor is not interested in paying the entire claim amount and only has the intention to make part payment of the

claim amount. This behaviour of the Corporate Debtor makes it a requirement that this petition be admitted and a Corporate Insolvency Resolution Process (CIRP) be initiated against M/S. INOX , WIND LTD and an Interim Resolution Professional (IRP) be appointed from the panel of the Tribunal by this Hon'ble Tribunal. Lastly it is submitted by petitioner that the Tribunal cannot bifurcate the claim amount into principal and interest rather the operational creditor is entitled to the whole claim amount and the part payment made by the corporate debtor is unacceptable.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 3,19,78,886/- (Rupees three crore, nineteen lacs seventy eight thousand, eight hundred eighty six Only) along with 18% interest. The default occurred on 31.03.2017. Computation Sheet is enclosed (Annexure- 6), Purchase order (Annexure 4) are attached with the main petition.

5. A demand notice in Form 3 is stated to be issued by the operational creditor on 22.10.2019 and the same has been delivered to the corporate debtor as postal receipt is annexed as Annexure 10 and corporate debtor had not replied to demand notice till date nor any objection were received by operational creditor against said notice.

6. Notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The Affidavit of service was filed vide Diary No. 1700 dated 02.03.2020. Then on 29.03.22 a date was requested by learned counsel for the respondent on the ground that the respondent-corporate debtor is exploring the possibility of settlement and before the next date of hearing 20% of the claimed amount will be paid to the

petitioner. After that on the next date of hearing i.e. 02.06.22 it was stated by learned counsel for the petitioner that he has received an amount of ₹ 43,55,227/- via Demand Draft from the respondent. And the learned senior counsel for the respondent stated that 20% of the remaining amount will be paid within next one month. Then on 12.07.22 it was stated by learned senior counsel for respondent-corporate debtor that today respondent is handing over a demand draft of Rs. 43,55,227/- to petitioner-operational creditor. And the order was passed that the 20% of the remaining amount be paid within next month and the matter was kept for listing on 11.08.2022. So, on 11.08.22 it was stated by learned counsel for the respondent that the respondent corporate debtor will be handing over a Demand Draft amount to Rs.43,55,220/- to the petitioner/operational creditor, during the course of the day & the order was passed that the total amount be paid by the respondent-corporate debtor to the petitioner/operational creditor within one month and the matter was kept for listing on 12.09.2022. Then on the next hearing date i.e. 12.09.22 it was stated by learned senior counsel for the Respondent/ Corporate Debtor that an amount of Rs. 43,55,220/- would be transferred through RTGS to the bank account of the Petitioner/ Operational Creditor during the course of the day & the order was passed that after transferring the same, last installment would be left to be paid to the petitioner, which would be paid before the next date of hearing i.e. 25.10.2022. So, on 25.10.22 it was stated by learned counsel for the respondent/corporate debtor that the last installment is ready and the same will be paid by tomorrow & the matter was then kept for 31.10.22. Then on 31.10.22 it was stated by the learned counsel for the petitioner-operational

creditor that in compliance with the last order, the last installment has been paid by the corporate debtor. A date was requested by learned counsel for the petitioner for seeking instructions from his client for withdrawal of the matter. So the matter was then kept to be listed on 18.11.2022.

On the date of next hearing of the petition i.e 18.11.22 it was submitted by learned counsel for the petitioner/ operational creditor that the principal amount has been paid but the interest component is still pending against the respondent/ corporate debtor. On the other hand, it was stated by a learned senior advocate for the respondent/ corporate debtor that the petitioner is not entitled to any interest as there is no basis for the same & then the order was passed that the arguments will be heard on this point by both the parties on the next date of hearing.

7. Reply has been filed vide diary No.00100/1 dated 19.04.2023 by the Corporate Debtor through its (Director) viz. Mr. Mukesh Manglik, at the registered and corporate office of the Corporate Debtor and has been duly authorized vide Board Resolution dated 24.09.2021. A copy of the Board Resolution dated 24.09.2021 was annexed by respondent/ Corporate Debtor as **Annexure R-1** with the reply. In the reply, the respondent Corporate Debtor submitted that claims, contentions, and averments raised by the Applicant are false, frivolous, misconceived, and untenable, in gross abuse of process of law and hence, cannot be sustained. As per the reply the total amount of alleged Debt claimed by the Operational Creditor ('OC') against the Corporate Debtor ('CD') is Rs. 3,19,78,886/- (alleged Amount receivable on Invoices Outstanding - Rs. 2,17,76,139/- together with alleged Interest at rate 18% on delayed payment for the invoices raised - Rs. 1,02,02,747/-)

**(Part-1 of Part IV; At Pg 9 of the Petition).** Further submitted that it is an admitted fact that the alleged entire Principal Amount i.e. Rs.2,17,76,139/- stands paid 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.1,02,02,747/-. 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.

7.1 Corporate Debtor also submitted that the Operational Creditor has raised 20 invoices dated 17.03.17 to 31.03.17 respectively (**Annexure-4 at Pg 31; Relevant at Pgs. 38-57 of the Petition**). Perusal of the above-mentioned invoices, shows that the alleged terms related to interest component, especially as claimed by the operational creditor, are not incorporated 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 as well as the purchase orders dated 20.01.17. Further submits that in the letter dated 10.01.2019 (**Annexure-5 at Pg.58 of the Petition**), issued by the Operational Creditor, titled as 'Confirmation of Balance at 31.12.2018', the Operational Creditor itself has requested the Answering Respondent/Corporate Debtor to confirm the outstanding balance as per their account i.e. Rs.2,17,76,139/-. Thus, it is an admission on behalf of the Operational Creditor that, as per its own accounts and records the amount due is Rs.2,17,76,139/-, i.e. the alleged Principal Amount and as per

the records and accounts as maintained by the Operational Creditor qua the Corporate Debtor, no amount is due towards the 'Delayed Payment Interest @18% p.a.'. Lastly, it is submitted by the respondent Corporate Debtor that the declared standalone net worth of the Corporate Debtor is INR 2238 Crores approx., 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 having a high net worth. As submitted by respondent the object of the Code is to ensure that the Insolvent Company is put back on its feet and not to disarray a solvent and financially sound company.

The rejoinder was not taken on record because the learned counsel for the petitioner has not complied with the order dated 09.10.2023 and there was no application for condonation of delay.

8. The short written submissions were filed by petitioner vide diary No. 100/2 dated 11.09.2023 and by respondent/corporate debtor vide Diary No. 100/3 dated 05.10.2023. Wherein the facts of the application have been reiterated respectively.

9. Compendium of judgments was filed by learned counsel for respondent vide Diary No. 100/4 dated 05.10.2023. i.e. ***Rohit Motawat Vs. Madhu Sharma Company Appeal (AT) (Ins.) No.1152 of 2022 ; S.S. Polymers Vs. Kanodia Technoplast Limited Company Appeal (AT) (Ins.) No.1227 of 2019 (Law Finder Doc Id# 1953044) ; Permali Wallace Pvt. Ltd. Vs. Narbada Forest Industries Pvt. Ltd. Company Appeal (AT) (Ins) No.36 of 2023 ; Ranjeet Singh Vs. M/s Karan Motors Private Limited***

**Company Appeal (AT) (Insolvency) No. 719 of 2020 ; Krishna Enterprises Vs. Gammon India Ltd. Company Appeal (AT) (Insolvency) No. 144 of 2018 (Law Finder Doc Id# 2017833) ; AS Krishna Associates Private Limited Vs. BL Kashyap and Sons Ltd. 2018 sec OnLine NCLT 20138 (Law Finder Doc Id# 2095195) ;** in which it is held that if the principal amount is already paid, application regarding interest is non-est. no interest can be claimed by the operational creditor. Further reliance is placed upon **M/s Oswal Cable Products Vs. M/s Jindal Specialty Textiles Limited CP (IB) No. 186/ChdIPb/2019 and M/s Oswal Cable Products Vs. M/s Jindal Specialty Textiles Limited CP (IB) No. 187/Chd/Pb/2019** in which it is held that CIRP cannot be initiated solely on the basis of claim of interest component. Learned counsel for respondent/ corporate debtor has further placed reliance on **A 'XYKno Capital Services Pvt. Ltd. Vs. Rattan India Power Ltd. Company Appeal (AT) (Insolvency) No. 913 of 2022 ; Talbot & Company Vs. Austin Distributors Pvt. Ltd. Company Appeal (AT) (Ins.) No. 1470 of 2022** in which it is held that the Hon'ble adjudicating authority cannot decide contractual issues under the code. In the judgement titled as **SBF Pharma vs. Gujarat Liqui Pharmacaps Pvt Ltd Company Appeal (ATJ (Ins.) No.883 of 2019** it is held that the insolvency resolution process was initiated fraudulently with malicious intent for any purpose other than for resolution of insolvency such application deserves to be dismissed. Lastly learned counsel for respondent/ corporate debtor has placed reliance on **SS Engineers vs Hindustan Petroleum Corporation Ltd Hon'ble Supreme Court of India 2022(234) Comp Cas 95 ; K Krishan v. Vijay Nirman Company Private Ltd. Hon'ble Supreme Court of India 2018 (18)**

**Scale 256** in which it held that CIRP should not be instituted against solvent companies.

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

11. The first issue for consideration is whether the demand notice in Form 3 dated 22.10.2019 was properly served. The demand notice was served upon respondent-corporate debtor as postal receipt is annexed at Annexure-10 of the petition.

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is submitted by the applicant that no notice of existence of dispute had been received by the operational creditor. There had been no repayment of unpaid operational debt in full by the corporate debtor to the operational creditor. It is deposed by way of affidavit that in terms of Section 9(3)(b) of 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 22.10.2019 and the present application. No dispute had been pending in any court of law or Arbitral Tribunal regarding the present claim of debt. Therefore, it can be said that there is no pre-existing dispute.

13. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 18.07.2019 in Form 3 was duly served on the corporate debtor. Therefore, the period of limitation would begin from the date of default i.e. 31.03.2017. This application was filed on 17.12.2019 vide Diary No. 7218. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

14. After hearing both the parties & careful perusal of record we are of the considered view that at this stage CIRP cannot be initiated solely on the basis of claim of interest component. Principal amount stands paid during pendency of petition as admitted by learned counsel for respondent as well as clearly established from the record available. Perusal of purchase order dated 20.01.17 & invoices annexed as annexure 4, shows that there is no provision or clause for payment of interest. Learned counsel for the respondent has rightly placed reliance upon the authorities (supra) specially the judgement involving the same issue passed by Hon'ble NCLAT in the case of **Rohit Motawat Vs. Madhu Sharma Proprietor Hind Chem Corporation & Anr. Comp App. (AT) (Ins) No. 1152 of 2022** 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 ‘S.S. Polymers’ (Supra), ‘Permall 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’. The present petition is not maintainable for recovery of interest which is otherwise also not due.*

15. Hence, in view of the authorities (supra and in the light of foregoing and reasons recorded, CP (IB) No. 21/CHD/HP/2020 is dismissed and disposed of accordingly.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**  
December 11, 2023  
J.S.W.

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**