



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, COURT-II  
CP (IB) No.246/KB/2023

Section 9 of the insolvency and bankruptcy Code,2016 read with rule 6 of the insolvency and bankruptcy (application to Adjudicating Authority) Rules, 2016.

In the matter of:

Vyom Mines and Minerals Private Limited

-----Operational Creditor

versus

Kamper Concast Limited

-----Corporate Debtor

Coram:

Shri Labh Singh, Member (Judicial)

Ms Rekha Kantilal Shah , Member (Technical)

Date of Pronouncement: 21.05.2025

Appearances (Through Hybrid Mode):

Ms.Urmila Chakraborty, Adv.	]	For Operational Creditor
Mr.Avirup Chatterjee,Adv.	]	
Mr.Prasenjit Pal,Adv.	]	
Mr.Rishav Das,Adv.	]	



Mr.P.P.Bishwal,Adv.	]	For Corporate Debtor
Mr.Tarun Chatterjee,Adv.	]	
Mr.Raju Mandal,Adv.	]	
Ms.Sohini Dey,Adv.	]	
Mr.O.Mukhopadhyay,Adv.	]	

### ORDER

**Per: Rekha Kantilal Shah, Member (Technical)**

1. The Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Vyom Mines and Minerals Private Limited** (Herein after referred to as Operational Creditor/ Applicant) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Kamper Concast Limited** (Herein after referred to as the Corporate Debtor/ Respondent). The Applicant's CIN-U74999WB2018PTC225108, having Registered Office at 10/A, K.K Roy Chowdhury Road, Sakherbazar, kolkata-700008. The Applicant is being represented by director of the Operational Creditor **MR. AVISHEK AGGARWAL**.
2. The Respondent is a Company incorporated on 07/04/1995 under the Companies act, 1956. Its CIN is **L27107BR1995PLC006446**. The Registered Office of the company is at N.P Centre, dukbunglow Road, District Patna, Bihar 800001. Therefore, this bench has jurisdiction to entertain and decide the Petition.
3. The total amount claimed to be in default is Rs 1,26,48,396/- alongwith Rs 19,33,894/- as interest at 18% p.a. Thereafter, the Corporate Debtor made payment of Rs. 8,50,000/- resulting to total dues of **Rs 1,17,98,396.35/-** (Rs. One Crore Seventeen Lakh Ninety Eight Thousand Three Hundred Ninety Six and Thirty Five Paisa only).



4. The date of default occurred on 24/01/2023 by Corporate Debtor.

#### **Submission of the Applicant**

5. The Corporate Debtor from time to time placed various order for supply of iron fines and pig chips to the Operational Creditor. The Corporate Debtor utilized the goods without raising any demur or objection.
6. Upon supply of goods the applicant from time to time raised invoices upon the Corporate Debtor. The Corporate Debtor made payment initially but later it defaulted in making payment.
7. The Corporate Debtor accepted such goods, and no objection as to the quality or quantity were ever raised at any point of time immediately after delivery.
8. As on 31<sup>st</sup> July 2022, A total sum of Rs. 1,27,17,502/- Was due and payable by the Corporate Debtor. Pursuant to follow ups by the Operational Creditor, the Corporate Debtor expressed inability to pay the entire dues at one go and an arrangement was entered into by and between the parties where in the Corporate Debtor agreed to pay the entire dues in five installments. However, the arrangement did not fully fructified. Thereafter, another attempt made towards to settle the matter wherein the Corporate debtor handed over various cheques For consolidated amount of Rs. 1,07,14,502/-. However, out of these said cheques, cheques bearing number 004876 and 004877 dated 30.06.2023 and dated 31.07.2023 respectively, for Rs. 25,00,000 each, were returned with the endorsement "fund insufficient". The Corporate Debtor also issued balance confirmation Acknowledging the amount due to operational creditor for Rs. 1,07,14,502/- as on 18.03.2023.



9. Thereafter, the applicant issued Notice under section 8 of IBC, 2016 on 17.08.2023, claiming interest over and above the principal sum due. In the reply Given by Corporate Debtor, they accepted to make payment along with interest at the bank rate.

#### **Submission by Respondent**

10. The Applicant served Notice in Form-3, under Rule-5 of the insolvency and bankruptcy (Adjudicating Authority) rules, 2016 on 17/08/2023 claiming amount of default **Rs. 1,07,14,502.35** and interest **Rs 19,33,984/-** totaling to **Rs 1,26,48,396.35**.

11. The Corporate Debtor made payments of Rs 8,50,000/- on 29-09-2023, thus the total amount of default comes to 98,64,502.35 on the date of filing this application. Thus, the present application is not maintainable since the amount of default is Rs 98,64,504.35/- which is below the threshold limit of Rs 1 crore under section 4 of the IBC, 2016.

12. The applicant has not attached GSTR-1 and GSTR-3B, which is necessary under Regulation 2B of the Insolvency and Bankruptcy Board of India (insolvency Resolution process Corporate Persons). Therefore, this application is not maintainable.

13. The Respondent is not liable for payment of interest i.e. Rs 19,33,894/-.

#### **ANALYSIS AND FINDING**

14. We have heard the learned counsel and perused the record. From the submission of the learned counsel and material on record the following issue arise for consideration:



I. Whether the Petition is non maintainable under section 4 of IBC, 2016?

15. The undisputed fact is that the present application was filed on 12.12.2023. However, the notice under section 8 was issued on 17.08.2023. When the notice under section 8 was issued on 17.08.2023, the total Principal amount payable was Rs.1,07,14,502.35/-, however, after issuance of notice U/s 8, the Corporate Debtor made payment of Rs.8,50,000/-. Hence, the principal amount payable by Corporate Debtor comes to Rs 98,64,502.35/-.
16. However, the Applicant in Part -IV of the Application has claimed the amount of Rs. 1,17,98,396.35/ as a total debt including interest of 18% p.a, whereas in the Demand Notice the Applicant has claimed an amount of 1,07,14,502.35 as a Principal debt and Rs 19,33,894/- as interest at 18% p.a. Thus, the total amount payable as per Demand Notice is Rs 1,26,48,396.35.
17. Now the issue to be decided is whether the threshold limit should be taken from the date on which the default has occurred i.e. on issuance of Section 8 notice, or on the date of filing of Application under section 9. In this regard, the Hon'ble NCLAT in case of **Metal's & Metal Electric Pvt. Ltd. vs. Goms Electricals Pvt. Ltd. (Company Appeal (AT) (CH) (INS) No.243 of 2021)**, has held that, a mere running of the eye of the ingredients of Section 9 of the Code makes it lucidly clear that the date of initiation of CIRP shall be on the date on which an application is made. To put it precisely, the date of default is not to come into operative play and the same ought not to be taken into account for anything but computing the period of limitation.



18. In the matter of **Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd. (Company Appeal (AT) (Ins) No.813 of 2021)** dated 25.08.2021 NCLAT held that that the threshold limit would be applicable on the date of filing of Application, and not on the date on which the default has occurred.

19. Many co-ordinate Bench of NCLT have also given similar decisions including one by **Hon'ble NCLT, Delhi Bench in the case of Udit Jain vs. Apace Builders and Contractors Pvt. Ltd. (IB-894/ (ND) / 2020)** dated 14.09.2022; holding as under :-

*"Since the instant application filed under section 9 of the Code, which is the subject matter of our consideration was filed on 11.06.2020, even though the statutory demand notice U/s 8 was sent on 17.02.2020, **only the date of filing needs to be considered and not the date of sending the Demand Notice.** Therefore, the threshold limit of Rs. 1 crore of debt will be applicable in the present case. Hence for the above-mentioned reasons the present Application is not maintainable".*

20. In the above decision also, it has been clearly held that only the date of filing of Application needs to be considered and not the date of sending the demand notice. The above decision is fully supporting the contention raised by the Corporate Debtor that the threshold limit should be taken on the date of filing of the application, and not the date of sending the demand notice. As the amount of operational debt on the date of filing of application i.e. 12.12.2023 is only Rs.98,64,502.35/- below the threshold limit of Rs.1 Crore as provided U/s 4 of the Code.



21. In its application, while mentioning the operational debt in Part IV, the Operational Creditor has included interest @ 18% per annum, though the amount of interest has not been calculated. We have also considered, whether the interest to be calculated by the Operational Creditor would be includable while calculating the operational debt to meet the requirement of threshold or not. In this regard, we find that there is no express agreement between the Operational Creditor and Corporate Debtor for computing interest. In this regard, the Operational Creditor could also not produce any documentary evidence justifying charging of interest except stating that the Corporate Debtor has agreed to pay interest in the reply of Demand Notice issued by the Operational Creditor under section 8 of IBC, 2016. The reply of the Section 8, Demand Notice is **Annexed as Annexure "I"**.
22. This issue has been settled by the **Hon'ble NCLAT in Prashant Agarwal Vs. Vikas Parasrampuriah (Company Appeal (AT) (Ins) No.690 of 2022)** dated 15.07.2022 holding that both, the principal debt and interest on delayed payment will be considered to assess maintainability in case the interest was stipulated in invoice. In a recent judgment, in case of **North West Carrying Company, LLP Vs. Metro Cash and Carry India Pvt. Ltd. (CP (IB) No.133/BB/2022)** dated 25.05.2023 after relying on the judgment in case of Prashant Agarwal (Supra), it has been again held that in order to club other charges with the principal amount express stipulation has to be incorporated specifically in the agreement, the purchase order or the invoice and in absence of the same, neither interest nor any other charges can be clubbed with the principal amount.
23. In the present case, there is no agreement between the Operational Creditor and Corporate Debtor for payment of interest on delay of refunding of advance money if any paid. In the attached invoice



on page 59-172 also, no such condition has been stipulated. Therefore, Operational Creditor has not been found justified for including interest @ 18% per annum till the date of payment in the total amount of debt as mentioned in Part IV of the Application. There being no legally enforceable right to claim interest, therefore, the interest to be calculated @ 18% per annum shall not be included in the total amount of debt for computing the threshold limit as provided in Section 4 of I & B Code, 2016 for the purpose of admitting the application Under Section 9.

24. After deciding the issue relating to the threshold to be applied in the case of present application as being the date of filing of application and interest, if any, being charged by the Operational Creditor on delay in payment of dues has not to be included in the amount of operational debt for the purpose of deciding the threshold for the application to be admitted U/s 9, as discussed above, we hold that the present application is not maintainable as being below the threshold limit as mandated U/s 4 of I & B Code, 2016. Further, it is a settled proposition that the National Company Law Tribunal is not a recovery forum. The parties are at liberty to approach the appropriate Forum for their dues. Therefore, the present application filed by the Operational Creditor is liable to be dismissed on the issue of being below the threshold limit, hence, the same is hereby dismissed.
25. As the present application has not been found maintainable being below the threshold limit, we do not find it necessary to adjudicate on other issues like existence of pre-existing dispute etc nor the Corporate Debtor raised any point on pre-existing dispute.



26. In view of the above, **the CP (IB) No. 246/KB/2023 is rejected as being non-maintainable.**
27. Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.

**Rekha Kantilal Shah**  
**Member (Technical)**

**Labh Singh**  
**Member (Judicial)**

**Order Signed On 21.05.2025**

**NKS(LRA)**