

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, COURT NO. II
KOLKATA**

I.A. (IBC) No. 661/KB/2021

In

C.P. (IB) No. 184/KB/2018

***An application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the National
Company Law Tribunal Rules, 2016.***

IN THE MATTER OF:

Sangita Fiscal Services Private Limited, a company incorporated under the provisions of the Companies Act, 2013 having its registered office at 16, Bonafields Lane, Kolkata – 700001.

... Financial Creditor

-Versus-

Duncans Industries Limited, a company incorporated under the provisions of the Companies Act, 2013 having its registered office at Duncans House, 2nd Floor, 31, N. S. Road, Kolkata – 700001.

... Corporate Debtor

-And-

IN THE MATTER OF:

South Assam Roadways Limited, an existing company within the meaning of the Companies Act, 2013, having its registered office at “Om Towers”, 32, Chowringhee Road, Room No. 304 (3rd Floor), Kolkata – 700071;

... Applicant

-Versus-

Ram Ratan Modi, Resolution Professional of Duncans Industries Limited, having his office at 2F, Merlin Links, 166B, S. P.

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Mr. Jishnu Saha, Adv.] For the Applicant in
Ms. A. Guha, Adv.] IA 761 of 2021
Mr. I. Saha, Adv.]
Mr. S. C. Prasad, Adv.] For the PF Authority
Mr. S.K. Tiwari, Adv.] For Income Tax Authority
Mr. Prithwish Roy Chowdhury, Adv.] IA 953/KB/2020
Mr. Aritra Deb, Adv.] For the Respondent No. 1
Mr. Shounak Mokhopadhyay, Adv.] IA 258/22- For the
Mr. Supriyo Gole, Adv.] Applicant
Mr. Rishav Banerjee, Adv.] For the petitioner in
Mr. Aishwarya Kr Awasthi, Adv.] IA NO. 494 of 2023
Mr. Rajarshi Banerjee, Adv.]

ORDER

Per: Bidisha Banerjee, Member (Judicial)

- 1.** The Court is congregated through a blended mode.
- 2.** The Learned Sr. Counsels/Counsels were heard at length.
- 3.** This application has been preferred by **South Assam Roadways Limited** to seek the following reliefs, inter alia: -
 - a.** *An Order be passed setting aside the email dated 16th March 2021 issued by the respondent, i.e., the*

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resolution professional rejecting the claim of the applicant;

- b.** *An Order be passed directing the respondent i.e., the resolution professional to admit the claim of the applicant as made in the proof of claim and take necessary steps in accordance with law;*
 - c.** *Such further and/or other Orders, as this Learned Tribunal deems fit and proper.*
- 4.** In the rejection letter dated 16th March, 2021 assailed herein the RP has categorically stated the claim for a sum of Rs. 29,78,815/- was verified from the books of accounts of the Corporate Debtor and Rs. 2,59,020/- reflecting in the books has been admitted by the RP and there is no provision in the Code to provide interest to the Operational Creditor, if the interest component is absent from the agreement.
- 5.** The relevant extract is as under: -

In this matter, when you submitted your claim of Rs. 29,78,815/- (Rupees Twenty-Nine Lakh Seventy-Eight Thousand Eight Hundred and Fifteen Only) (Rs. 14,24,613/- Principal and Rs. 15,54,202/- Interest) along with all the annexures, then the RP verified your claim from the Books of Accounts of the Corporate Debtor and it was earlier informed you that your dues of Rs. 2,59,020/- (Rupees Two Lakh Fifty-

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Nine Thousand and Twenty Only) is reflecting in the books which is already admitted by the RP. Further, the RP also confirmed your claim amount from the accountant of the Corporate Debtor, but he is unable to provide any further information in respect of your claim. So in that case, the RP is unable to admit you claimed amount.

It is to inform you that there are no provisions available in the Code to provide the interest to the Operational Creditor, if the interest component is absent from the agreement.

The NCLT Kolkata Bench held in ‘Electro Poles Product Pvt. Ltd. vs. APE Power Pvt. Ltd.’, that the Corporate Debtor does not contain a liability to pay interest for delayed payment, if the interest clause does not contain in the Tax Invoice or Agreement of the Operational Creditor. The Supreme Court held in Mobilox Innovations Private Ltd. vs. Kirusa Software Private that the obligation for the Corporate Debtor to pay interest is not “Spurious, Hypothetical or Illusory”. It is pertinent to mention herein that M/s. South Assam Roadways Limited does not have the agreement which contains the interest on the delayed payment, then the Undersigned is not liable to provide the interest.

Proof of claim by South Assam Roadways Ltd.

Section 238 – Provisions of this Code to override other laws –

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The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

*According to Section 238, the Code shall prevail over any other provision or law contrary or inconsistent with any of its provisions. The Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank* held that “..... precisely for this reason that the non-obstante clause, in the widest terms possible, is contained in Section 238 of the Code, so that any right of the corporate debtor under any other law cannot come in the way of the Code”.*

The Insolvency Law Committee Report of March 2018 reflects on the legislative intent behind the enactment of the Code. It reads “the introduction of this legislation was done with the aim of replacing the existing framework for insolvency which was visibly inadequate, ineffective and wrought with delays”.

*In the recent case of *Duncans Industries Ltd. v. A. J. Agrochem*, wherein the Supreme Court held on 04.10.2019, that the provisions of the Code would prevail over the Tea Act, 1953. Further, it is a settled point of law that in case of an inconsistency arising between two special legislations, the latter enacted legislation will have an overriding effect on the previously enacted legislation “*Solidaire India Ltld. v.**

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Fairgrowth Financial Services Ltd., (2001) 3 SCC 71". This rule read with the non-obstinate clause enshrined under Section 238, makes it clear that the Code shall prevail over the Tea Act.

Further, in Swiss Ribbons Pvt. Ltd. v. Union of India, the Supreme Court, while discussing the scheme of the Act has clearly held "Unless such reorganization is effected in a time bound manner, the value of the assets of such persons would deplete. Therefore, maximization of value of assets of such persons so that they are effectively run as going concerns is another very important objective of the Code".

It concludes that the Insolvency and Bankruptcy Code, 2016, prevails over any other provisions or statute contrary or inconsistent with any of its provisions.

- 6.** The petitioner has failed to justify as to why his claim would be entertainable when the entire amount is not reflected by the books of accounts of the Corporate Debtor.
- 7.** By way of a reply affidavit the respondent, RP has clarified, while placing an Order of BIFR dated 16.01.2012 and pursuant to its Order the admission of claim to the extent of 25% without any interest, coupled with absence of acknowledgment of a debt for a sum of Rs. 15 lakhs an odds as also applicability of Regulations 13 and 14 of the IBBI for Insolvency Resolution Process for corporate persons Regulations, in regard to verification and determination of

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claims. We do not find any infirmity with the rejection extracted supra.

- 8.** Accordingly, this application stands **dismissed** with no costs.
- 9.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 10.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on 07th of May, 2024.

Ar. [Steno]