

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH  
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 28.01.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.11/9/AMR/2021		9 of IBC	Poly Pipesw India Pvt Ltd Vs Anantha Biotechnologies & Allied Industries Pvt Ltd

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

CP(IB) No.11/9/AMR/2021 is dismissed, vide separate orders.

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**JUSTICE TELAPROLU RAJANI  
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH**

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**CP (IB) No. 11/9/AMR/2021**

**Petition under Section 9 of the Insolvency and Bankruptcy Code,  
2016 Read with Rule 6 of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority) Rules, 2016  
AND**

**In the matter of  
M/s.ANANTHA BIOTECHNOLOGIES & ALLIED INDUSTRIES  
PRIVATE LIMITED**

**Between**

M/s.Poly Pipesw India Private Limited,  
Lakshmi Shankara,  
#95, Dr.Alagappa Road,  
Purasawalkam,  
Chennai – 600084.

**...Operational Creditor**

**AND**

M/s.Anantha Biotechnologies & Allied Industries,  
S.N78, Narayanapuram Panchayath,  
Nagireddypalli (V), Somuladoddy Post,  
Ananthapur Rural (M), Ananthapur District – 515004,  
Andhra Pradesh.

**...Corporate Debtor**

**Date of pronouncement of orders:28.01.2022**

**CORAM:**

**Justice Telaprolu Rajani, Member Judicial.**

**Appearance:**

For Operational Creditor : Mr. N.P.Vijaykumar., Advocate.

For Corporate Debtor : Mr.Shabber Ahmed, Advocate

*7/10/22*

**ORDER**

1. This Application is filed by M/s.Poly Pipesw India Private Limited(“hereinafter referred to as Operational Creditor”) seeking this Tribunal to initiate Corporate Insolvency Resolution Processagainst M/s. Anantha Biotechnologies & Allied Industries (“hereinafter referred to as Corporate Debtor”), as the Corporate Debtor allegedly committed default of the debt which is due to the Operational Creditor.
2. The facts as put forth in the Petition are that, the Operational Creditor has supplied polydenial chloride, allied KSR 67 and other substances to the Corporate Debtor from 24.02.2018 to 07.02.2019. The Corporate Debtor failed to pay the amount due towards the said supply by the Operational Creditor. The total due is Rs.2,62,41,032/- out of which Rs.1,50,30,848/- forms the principal and the rest of the amount is the interest @24% Per Annum.
3. A demand notice was issued, for which no reply was issued by the Corporate Debtor. Hence this Petition seeking for initiating CIRP.
4. The Corporate Debtor filed counter admitting that the material was supplied by the Operational Creditor as stated in the Petition during the period from 24.02.2018 to 07.02.2019. The said materials are further sold by the Corporate Debtor to the Government. After change in the government in the year 2019 there is inordinate delay on the part of the government in clearing the bills of the Corporate Debtor, which resulted in delay in clearing the invoices of the Operational Creditor. As such few invoices were left unpaid as the Corporate Debtor did not receive the payment from the Government. The contractual obligations between the Operational Creditor and Corporate Debtor are on back to back basis and there is no agreement on interest to be levied on delayed payments, as

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the Operational Creditor is well aware that the Corporate Debtor supplies this material to the Government. Both the parties convened a meeting on 28.09.2020 and agreed that the outstanding dues will be paid by the Corporate Debtor upon clearance of its bill by the Government. However, to the utter surprise of the Corporate Debtor and in violation of the agreement between the parties, the Operational Creditor filed this case.

5. The Corporate Debtor has no option, but to clear the outstanding invoices hence with lot of difficulty and by availing loan/financial assistance from the Bank provided during Covid period to the industries which are in losses, it has arranged payment under outstanding invoices to the Operational Creditor. The Operational Creditor also agreed to receive the principle amount. The Corporate Debtor made the payment on 23.04.2021 with great difficulty and the total principle amount is paid. Hence the remaining amount which is only the interest cannot form basis of this Petition. Hence petition is liable to be dismissed.
6. Heard both the Counsel, and perused the written submissions filed on behalf of both the parties. There is no denial of the fact that the principle amount is cleared by the Corporate Debtor. The only dispute is with regard to the interest part of the debt. The Counsel for the Corporate Debtor, by relying on several judgments contends that this Petition cannot be pursued merely for realising the interest part of the debt and that filing of such an application for realising the interest would amount to a malicious prosecution for which the Operational Creditor would be liable for punishment.
7. The counsel for the Operational Creditor on the other hand submits that the judgments relied upon by the Corporate Debtor are rendered on various set of facts which are not similar to the facts of

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this case and interest part of the debt in those cases was meagre when compared to the amount of interest which has accrued in this case. On that basis he contends that the filing of this application and pursuing the same for realising the interest would not amount to malicious prosecution.

8. From the arguments the only point that remains to be determined is:

- I. Whether the application can be pursued for the interest part of the debt.
- II. To what result.

**I. Whether the application can be pursued for the interest part of the debt.**

There is no denial of the fact that the principle amount was paid by the Corporate Debtor after filing of this Petition and not prior to that. The petition is filed in respect of both principle and the interest part of the debt.

A demand notice was issued for both the principle and the interest. No reply was issued to the said notice. A perusal of the terms and conditions of invoices would show that there is a specific condition that the interest @24% per annum would be charged for all the delayed payments.

In fact the invoices filed along with the application are not invoices but the tax invoices. Whether a stipulation in tax invoice which does not bear the signature of the Corporate Debtor would amount to an agreement for payment of interest is the question that crops up in the foremost. The Counsel for

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the Corporate Debtor contends that since the principal amount is cleared during the pendency of the application and before the admission of the Application, the Application cannot be pursued for the interest part alone since, the definition of operational debt under the IBC does not include interest. He also submits that there is a clear distinction drawn under IBC between a financial debt and an operational debt and there is conscious exclusion of interest under the definition of operational debt which can be understood by the inclusion of the same under the definition of financial debt. The Counsel for the Operational Creditor contends that under Section 433 of the Companies Act the Operational Creditor would be entitled for interest, so also under the Sales of Goods Act which provides for interest. In answer to the said contention the Counsel for the Corporate Debtor submits that the old winding up regime under Section 433 & 434 did not differentiate between operational and financial debts but with the advent of IBC there is an express differentiation between the two debts. He submits that in the light of the judgments rendered by various authorities and Courts, pursuing the case for interest part alone would amount to malicious prosecution. Both the Counsel relied on certain judgments in support of their contentions. Firstly the judgment (1992) 1 Supreme Court Cases 508 between Secretary, Irrigation Department Government of Orissa and others Vs. G.C Roy. The above judgment dealt with the interest pendente lite and whether it can be awarded by the arbitrator. There is no dispute that the arbitrator has authority to award interest. But as rightly contended by the Corporate Debtor's Counsel the dispute is under IBC and not Arbitration Act. Hence, the said judgment

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does not come to the help of the Operational Creditor. 2) (2009)3 SCC 527 between Vijay Industries Vs. Natl Technologies Limited. The judgment is rendered under the Companies Act 1956 in a petition filed for winding up on the ground of inability of the Company to pay its debt. Relying upon the judgment of the Orissa High Court in Krishna Chemical Vs. Orient Paper and Industries Limited(2005) 128 Comp Case 412(ORI) wherein it was held that the interest amount as claimed by the Operational Creditor in the two cases against the company however may not be in accordance with the provisions of Section 4 & 5 of the Companies Act 1993 held that the fact that the exact amount of interest claimed by the Operational Creditor against the company is disputed can be no ground to dismiss the petition for winding up for non-payment of the interest so long as the liability to pay interest of the Company to the Operational Creditor exists under Section 4 & 5 of the Companies Act 1993 and admittedly such liability has not been discharged by the Company. The first difference between the case dealt with by the Orissa High Court and the case on hand is that they are filed under different enactments. In order to borrow the ratio of the said Judgment rendered under the Companies Act going by the definition of the operational debt under IBC there is no entitlement of interest unlike under Sections 4 & 5 of the Companies Act 1993. In the said case the court decided the interest as 12% p.a. with simple instead of 24% p.a. and fixed a time of eight weeks to pay the said amount failing which consequences as provided by law were said to be ensuing. But the National Company Law Tribunal cannot adjudicate on the rate of interest and grant time to the Corporate Debtor to pay

the said interest and impose a default clause. The other judgment relied upon is reported in (2005) SCC online Ori 159 between Krishna Chemicals & Diamond Chemical Industries Pvt. Ltd Vs. Orient Paper and Industries Ltd which is also rendered in a case of winding up Petition under the Companies Act. It was held that the company is liable to be wound up for non-payment of interest under the provisions of the Act. In the said case also the principal amount was paid during the pendency of the cases but the interest amounts were not paid on the ground that the Company bonafide disputed its liability to pay interest to the two Petitioners. It was held that the fact that the exact amount of interest claimed by the Petitioners against the Company is disputed can be no ground to dismiss the Petition for winding up for non-payment of the interest so long as the liability to pay interest of the Company to the Operational Creditor exists under Sections 4 & 5 of the Companies Act 1993 and admittedly such liability has not been discharged by the company. For the same reason that this application is not filed under the Companies Act, this judgment cannot be applied to the facts of this case. A judgment rendered by the Hon'ble Supreme Court reported in (1971) 3 SCC 632 between M/s.Madhusudan Gordhandas & Co. Vs. Madhu Woollen Industries Pvt. Ltd is also rendered under the Companies Act in a winding up petition filed thereunder. The issue that came up in the said case is totally different from the one involved in this case.

The judgments relied upon by the Corporate Debtor's Counsel can be looked into. The judgment of National Company Appellate Law Tribunal, New Delhi in Company Appeal (AT) (Insolvency) 883 of 2019 between SBF Pharma

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Vs. Gujarat Liqui Pharmacaps Pvt. Ltd. wherein the NCLAT considered Section 65 which is as under:

“65. Fraudulent or malicious initiation of proceedings.- (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon a such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.”

It was held that in the said case the Respondent/Corporate Debtor is not insolvent and viable and feasible to pay the claim amount. Only for recovery of the interest the appellant is pursuing the Insolvency Resolution Process which is malicious intent for any purpose other than for the resolution of insolvency or liquidation. Whether this application is filed with malicious intent or not would be decided after appreciating the entire material on record in the light of the judgments. The second judgment is rendered by the National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Insolvency) No.1227 of 2019 between S.S.Polymers Vs. Kanodia Technoplast Limited in the said case also the principal amount is paid before the admission of the Application and even after receiving the total amount the appellant therein pursued the application under Section 9 of the I & B Code for a sum towards interest. The Adjudicating

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Authority in the background of the said facts observed that in the absence of an agreement no such amount can be claimed. The learned Counsel for the Appellant therein relied on invoices to suggest that in invoices the claim was raised for payment of interest. The NCLAT Delhi was not inclined to accept such submission as they were one side invoices raised without any consent of the Corporate Debtor. Hence, the application which was pursued for realization of interest amount was held as being against principal of the I & B Code and as having been pursued with malicious intent.

The other judgment is rendered by National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Insolvency) No.1014 of 2019 between M/s.Steel India, Partnership registered under the Partnership Act, 1932, D/7, 40L Kunthunath Apt. Nahur Road, Mulund (W), Mumbai – 400080. Vs. Theme Developers Pvt. Ltd. 3AB Rajabahadur Mansion 20 Ambalal Doshi Marg Fort, Mumbai – 400023. In the said case there was an agreement to pay 2 % interest for the delayed payment if it is for more than 60 days. In spite of there being an E-mail where Operational Creditor quoted the rate to the Corporate Debtor, the NCLAT held that the Operational Creditor has not filed any document to show that the Corporate Debtor ever agreed to pay the interest for the delayed payment. It also observed that the copy of supply of order is not filed by the Operational Creditor to prove that interest at 2% is chargeable for the delayed payment. It is observed that no document was placed before them to show that the Corporate Debtor has accepted to pay interest for the delayed payment. It also observed that the copies of invoices which are annexed with the appeal does not contain the said

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term of interest. The Operational Creditor issued a demand notice in the said case and the Corporate Debtor made payment of the principal amount and the outstanding amount was only the interest part of the claim. Subsequently another demand notice was issued by which time the dispute relating to the payment of interest was existing. Hence, the Adjudicating Authority rejected the application by the impugned order therein. The NCLAT observed that there was a pre-existing dispute before issuance of the demand notice. Hence, the application is not maintainable for the interest part of the debt as it cannot be termed as an operational debt. In the Judgment of the Hon'ble Supreme Court reported in 2018 SCC Online NCLT 20138 between AS Krishna Associates Private Limited Vs. BL Kashyap and Sons Ltd., the Supreme Court after examining the law on the subject, observed that the definition of operational debt has no provision for payment of interest since there are no such provisions to initiate CIRP on the ground of non-payment of interest on operational debt. The claim of interest when actual amount of claim as per invoices have already been paid cannot be a ground to trigger CIRP against the Corporate Debtors under the Code. It also observed that the case is not of a financial debt but it is of an operational debt and that the Operational Creditor refused to accept the payment on the ground that they are entitled to interest even though there is no such claim for payment of interest either in the demand notice or the Application filed in Form-5.

The Judgment rendered by the National Company Law Tribunal, Chandigar bench in Company Petition No.8/2016 between Wanbury Ltd. Vs. Panacea Biotech Ltd is also relied upon wherein the judgment of the Hon'ble Supreme Court

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which set aside the judgment of the High Court and instead of remitting the matter to the High Court disposed of by directing the Corporate Debtor to pay simple interest on the admitted sum @ 12% p.a. instead of 24% p.a. was relied upon but the Tribunal however, considering that the issue therein has to be determined in view of the provisions of the Code which has come into force with effect from 01.12.2016 has held that there is a marked difference between the definition of the term financial debt and the operational debt. Whereas under Section 5(8) the term financial debt means debt along with interest if any which is disbursed against the consideration for the time value of money, in the definition of the term operational debt under Section 5(21) the word interest has not been mentioned. After considering the argument of the Counsel for the Operational Creditor therein that the interest can be determined by the Tribunal at a reasonable rate as the Operational Creditor is entitled to interest in accordance with the Section 61 of Sale of Goods Act and Section 3 of the Interest Act it was held that, that was never the intention of the legislature under the Code that the Tribunal should determine the rate of interest and grant time to the Company to pay the amount as per the directions. It is clearly intended that an Application filed under Section 9 of the Act is either to be admitted or rejected within a period of 14 days of the receipt of the Application and there is no scope of passing an interim order like the one suggested by the learned Counsel for the Applicant therein. It is held that the entire amount of debt as per the intention of the legislature under the Code having been paid by the object, the application is rejected.

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The correspondence between the parties was relied upon by the Operational Creditor's Counsel. The E-mail sent by the Applicant and acknowledged by the Corporate Debtor dated 28.09.2020 shows that it is an internal E-mail of the Operational Creditor's Company stating that there were discussions with one Mr. Anantha Reddy of the Corporate Debtor and points discussed were listed as four. The first is signed balance confirmation received for the principal amount. Second is the Repayment of principal amount, wherein it is stated that customer has confirmed that the principal amount shall be repaid immediately after receipt of payment from Government of Andhra Pradesh which is expected in three to four months. Third is for the interest for the delayed period till the date of repayment. It is mentioned that the customer has confirmed post settlement of principal outstanding, customer shall settle the interest amount and the customer has requested for the rate reduction in interest percent which will be taken to the management of poly pipes and shall be decided after receipt of the principal outstanding and fourthly cheques wherein the customer has agreed to provide cheques within a week since the Authorized Signatory is out of station. This E-mail would only reflect that there were discussion between the parties and there was a request to consider reduction of the interest.

It can be seen that the rate of interest specified in the subject of E-mail is 18% p.a. wherein the tax invoices on which the Operational Creditor relies stipulates interest @ 24% p.a. Hence, by virtue of the rate of interest mentioned in the E-mail the Operational Creditor would impliedly admit that the interest specified in the tax invoice is not intended to

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be acted upon. Whether specifying 18% interest in the E-mail would amount to an agreement or not has to be next looked into. The E-mail does not reflect that the said rate of interest was agreed by the Corporate Debtor. The only contention is that since a copy of E-mail was marked to the Corporate Debtor it stands admitted. In my considered opinion, simply because there was a request to reduce the interest it cannot be said that the Corporate Debtor has agreed that there was an agreement of interest between both of them. The judgment of NCLAT, New Delhi in M/s.Steel India did not consider E-mail as constituting an agreement. That apart the letter dated 23.04.2021 addressed by the Corporate Debtor to the Operational Creditor would show that the amounts and cheques towards the principal amount were issued by the Corporate Debtor. It also mentions that as on that date there are no dues to the Operational Creditor's Company. There is no undertaking that they would pay the interest amount in future and that they are liable to pay any interest. A letter which was sent by the Operational Creditor to the Corporate Debtor is also enclosed wherein the waiver of interest was refused and it was stated that they would pursue the Company Petition before the NCLT for the balance amount after depositing the cheque and realizing the sum of Rs.40,00,000/- which is towards the principal amount. From the above correspondence and the documents filed by the Operational Creditor it can be understood that there is a stipulation about the interest in the tax invoice and that there is no agreement pertaining to the interest otherwise and the rate of interest mentioned in the tax invoice as already observed is given a go by, by the Operational Creditor when the interest is mentioned

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as 18% in the E-mail dated 28.09.2020. The E-mail dated 28.09.2020 would also show that the request made by the Corporate Debtor with regard to the settlement of the interest amount would be taken to the management of the poly pipes and shall be decided after receipt of the principal outstanding. But the subsequent letter only mentions that the waiver of interest would not be considered since, the Corporate Debtor claimed waiver though it diverted the funds of the company to semi business and also other business of the Corporate Debtor which are carried on by various entities. By making such allegations, the issue of interest becomes a contentious one between the parties which cannot be adjudicated by this tribunal. The principle that the operational debt does not include interest and hence a petition for interest alone cannot either be filed or be pursued is well settled and is well within the spirit of the IBC. Hence, I opine that this application which is being pursued only for the interest part of the debt cannot be admitted. Moreover the object of IBC is to keep the companies as ongoing concerns. The facts of this case would reveal that after filing of the Application, the Respondent cleared the principal amount. The defence taken in the counter is that the amounts due to the Operational Creditor were agreed to be paid after the Corporate Debtor receives the amounts from the Government. There is no denial of the said fact in the rejoinder filed by the Operational Creditor. Even in the E-mail which is relied upon by the Operational Creditor it is mentioned that the principal amount would be repaid immediately after receipt of payment from the Government of Andhra Pradesh which is expected to be in three to four months. There was no dispute raised with regard to the said undertaking given by the

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Corporate Debtor. The fact that the payment to the Operational Creditor is contingent on receiving the amounts from the Government would show that the Corporate Debtor is not an insolvent. Hence, on that ground also the Application fails.

So far as the aspect of malicious prosecution is concerned, this Tribunal is inclined to accept the argument of the Operational Creditor's Counsel that since the interest part of the debt is as huge as more than Rs.1 Crore it cannot be said that the application is being pursued with malicious intention. He contends that in the judgments cited by the Corporate Debtors the amount of interest was meagre when compared to the amount of interest involved in this case and hence, it was held that the prosecution for interest was malicious. Hence, the application though is held as not malicious prosecution is rejected for the aforementioned reasons.

As regards the right of Operational Creditor to recover interest, *The Judgment of the Supreme Court in Civil Appeal No.7352 of 2008 between M/s.Vijay Industries Vs. M/s.NATL Technologies Limited* by relying on several judgments observed that the term debt may refer not only to principal (value of goods or amount advanced) but also interest due thereon, where there is a contract to pay interest. It was also observed that where there is a bonafide dispute in regard to interest, the Court considering a Petition under Section 433(e) should not decide the issue, merely to avoid the multiplicity of proceedings. The purpose of winding up proceedings being completely different from the purpose of proceedings for recovery of a debt, winding up proceedings are not a substitute for a civil suit and therefore, relegating

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parties to the suit cannot be considered as resulting in multiplicity of proceedings. In this case there is a need to admit evidence with regard to the agreement of interest between the parties, since though the liability to pay interest is not denied, there is a request for reduction of rate of interest. The Operational Creditor agreed to look into the request but later rejected on certain grounds. Evidence pertaining to those grounds needs to be taken and evaluated, until which time no finding on the eligible rate of interest can be given. In the light of the above, the Operational Creditor is given liberty to claim interest if he is entitled for the same, before the appropriate forum.

**II. To what result:**

CP (IB) No. 11/9/AMR/2021 is dismissed.

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**JUSTICE TELAPROLU RAJANI  
MEMBER JUDICIAL**

*Swamy Naidu*