

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

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 01.09.2023 AT 02:25 P.M.**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB)/58/9/AMR/2020		9 Of IBC	Premium Transmission Pvt Ltd Vs BGR Energy Systems Ltd
	IA(IBC)/11/2023	60(5) of IBC	BGR Energy Systems Limited (CD) Vs. Premium Transmission Private Limited (OC)

ORDER

Mr.T.Vijayakumar Reddy, Ld. Counsel for the OC and Mr.Vishnu, Ld. Proxy counsel for the CD present. Orders pronounced. IA(IBC)/11/2023 is dismissed and CP(IBC)/58/9/AMR/2020 is admitted, vide separate orders.

sel/- Dated 4/9/23
MEMBER JUDICIAL

RSN

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

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CP (IB)/58/9/AMR/2020 & IA(BC)/11/2023

**In the matter of a 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. BGR ENERGY SYSTEMS LIMITED**

BETWEEN:

**Premium Transmission Private Limited,
(CIN No. U01119PN1983PTC133199)
Premium House, Mumbai Pune Road
Chinchwad, Pune, Maharashtra – 411 019**

... Operational Creditor

AND

**M/s. BGR Energy Systems Limited,
(CIN No. L40106AP1985PLC005318)
Plot No. A5, Pannamgadu Industrial Estate,
Ramapuram Post, Sullurpet (T),
Nellore District, Andhra Pradesh – 524401**

... Corporate Debtor

Date of pronouncement of orders: 01.09.2023

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor : Mr. T.Vijayakumar Reddy, Advocate.

For Corporate Debtor : Mr. SVS Chowdary, Advocate.

ORDER

(Per: Justice Telaprolu Rajani, Member Judicial)

1. This Company Petition is filed by the Petitioner, Premium Transmission Private Limited, i.e., the Operational Creditor (“in short **OC**”) against the Respondent M/s. BGR Energy Systems Limited i.e., the Corporate Debtor (“in short **CD**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against the CD for the default committed by the CD in discharging the debt which is due to the OC.
2. The facts of the case are as follows:
 - a) The OC is a Private limited company incorporated under the provisions of the Companies Act, 1956 while the CD is a listed company incorporated under the same act as a joint venture between GEA Energietechnik GmbH, Germany and one Mr. B.G. Raghupathy (promoter), to manufacture and sell on-line condenser tube cleaning systems debris filters and rubber cleaning balls used in thermal and nuclear power plants.
 - b) The OC and the CD were having business transactions between them since 15 years. Around 13.02.2018 and 24.08.2017, the CD approached the OC for supply of gearbox and related accessories required for its machineries pertaining to the projects undertaken by the CD with Andhra Pradesh Power Generation Corporation (“**APGENCO**”) and Neyveli Uttar Pradesh Power Limited (“**NUPPL**”). The CD raised purchase orders as per their requirements from 2018 for the above stated projects.

- c) The CD started placing purchase orders on the OC for purchase of Gearboxes pertaining to the projects. As per the terms of purchase order, the OC submitted the Bank Guarantees as and when requested by the CD, the Operational Creditor was required to supply the Gear Boxes and connected materials.
- d) Initially, the CD has made payments against the invoices raised by the OC. However, from March 2018, the CD defaulted in making payments. For the supply provided by the OC, a sum of Rs. 5,46,00,613.71/- (without interest) was due and payable as on 09.01.2020 by the CD.
- e) On 25.10.2019, the representatives of the OC visited the CD to discuss the overall pending dues payable to the OC for the invoices. During the said meeting, the CD assured that the payments will be made before December 2019. Accordingly, on 30.10.2019 the OC, by its two e-mails, requested the CD to acknowledge the dues payable by the CD. In the said e-mails, the outstanding details of the dues were also attached. Despite multiple reminders, there was no reply from the CD. Finally, on 05.11.2019, the CD, after verifying the outstanding details sent by the OC, acknowledged and agreed to make a part payment. Hence the demand notice was issued, inspite of which no payments were made. Hence this Petition, seeking to initiate CIRP.

3. The CD filed counter, admitting that the purchase orders were placed by the CD and that the CD has honoured most of the invoices raised against the said purchase orders. A demand notice was issued claiming interest @ 20% per annum, subsequently Section 9 of IBC petition filed by the OC claiming amount along with interest @ 20% per annum. Thereafter, the CD made payment to an extent of Rs.5.02 Crores and the same was acknowledged by the OC. The principal amount claimed by the OC is Rs.5.46 Crores. The CD called upon the OC to come forward for reconciliation of accounts. Since a sum of Rs. 0.13 Crores is not payable as claimed by them and is not matching with their book of accounts and according to them, the principal amount payable is only Rs.5.34 Crores. Due to non-submission of bank guarantee and non- supplying of the materials as per the terms and conditions of the purchase orders the amount of Rs.0.30 crores was put on hold. There is no interest clause specified as per the purchase orders and now the amount is being demanded highhandedly. Mere filing of a calculation sheet of interest without any supporting agreement will not create any legal right. Hence, this petition is liable to be dismissed.
4. Rejoinder is filed by the OC, contending that there is no dispute raised by the CD for the demand notice and the CD had issued no reply to the demand notice. The demand notice contained all the necessary documents based on which the demand was substantiated by the OC, which the CD neither replied nor disputed until the counter was filed on 06.06.2022. Interest was calculated on the basis of the terms and conditions of the invoice raised by the OC. The CD, in the pretext of

having settlement discussions has successfully expanded the time bound proceedings of IBC for almost two years. They made few part payments. The payments made by the CD were firstly adjusted towards the amount of interest and the remaining amount was adjusted towards the principal. It is a clear proposition of law that any amounts paid by the debtor can be adjusted towards the outstanding interest. Hence, this petition is to be admitted.

5. Heard both the counsel and perused the written submissions filed by both sides.
6. The CD admits the transactions between the parties but the contention is that there needs to be a reconciliation between the amounts and that the amount claimed is above the amount that is due. The difference of the amount is few lakhs and the admitted amount is beyond Rs.5 Crores. So far as the pecuniary jurisdiction is concerned, the petition becomes maintainable, since the admitted amount is more than Rs.1 Crore.
7. Now importantly the issue revolves around the interest amount that is charged by the OC. The contention is that there was no agreement for interest, but a perusal of the invoices would show that interest @20% per annum is stipulated for the delayed payments. The CD does not deny the invoices. After filing the Petition, admittedly, the CD has paid Rs.5.02 Crores and the major part of the remaining amount of the claim pertains to the interest amount. While paying the amounts there was no direction given to the OC to appropriate the amount in a

particular fashion. In such circumstance, it would be the prerogative of the OC to appropriate the amount towards interest. In that regard a judgment of the Supreme Court in *Gurpreet Singh vs Union of India in Appeal (Civil) 4570 of 2006 dated 19.10.2006* rendered by the Constitutional Bench can be referred to, wherein the Supreme Court observed that the question that they are concerned with, arises when a debtor makes a payment which does not satisfy the full debt or, in other words, remains a part-payment. The general rule of appropriation is set out in Halsbury's Laws of England, Fourth Edition, thus, "Where several distinct debts are owing by a debtor to his creditor, the debtor has the right, when he makes a payment, to appropriate the money to any of the debts that he pleases and the creditor is bound if he takes the money, to apply it in the manner directed by the debtor. If the debtor does not make any appropriation at the time when he makes the payment, the right of appropriation devolves on the creditor. An appropriation by the debtor need not be made in express terms, but must be communicated to the creditor or be capable of being inferred. It may be inferred where the nature of the transaction or the circumstances of the case are such as to show that there was an intention to appropriate." Further it was observed that the principle of appropriation is set out in Chitty on Contracts, 29th Edition. The question of appropriation as between principal and interest is set out in paragraph 21-067 in the following words: "Where there is no appropriation by either debtor or creditor in the case of a debt bearing interest, the law will (unless a contrary intention appears) apply the payment to discharge any interest due before applying it to

the earliest items of principal.” The relevant provisions governing contractual dealings are found in Sections 59 to 61 of the Indian Contract Act. Hence, from the above judgement it is clear that when there is no direction by the debtor with regard to the appropriation of the amounts paid by him, the creditor would first appropriate towards the interest that becomes due, as was done in this case.

8. A judgment of NCLAT, New Delhi in “*Company Appeal (AT) (Ins.) No. 690 of 2022 between Prashant Agarwal vs. Vikash Parasrampuria & Anr.*”, wherein held that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which is stipulated in the invoice has to be added. We may refer to Para 9 (vi) of the judgment, which is to the following effect:

“9(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 I205 (E) dated 24.3.2020 (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.”*

The judgment of NCLAT in Company Appeal (AT) (INS) No. 690 of 2022 between Mr.Prashat Agarwal v.Vikas Parasrampururia also held that the interest stipulated in the invoice creates a liability.

9. The counsel for the CD, though, in the written arguments contends that according to clause 6.2 of General conditions of Contract, no interest can be charged for the delayed payments, does not place the said terms on record. The OC on the other hand denies any such contract. However, in the synopsis the OC mentioned that the amount is without interest, whereas in the application proper, he claims interest based on the invoices. The invoices nevertheless show that the interest @20% is stipulated. Even in the demand notice, acclaim for interest was made. The CD did not choose to reply to the said demand notice. Hence the CD cannot now be heard to say that no interest was agreed upon. An IA in IA 11 of 2023 was filed seeking to take additional documents on record, which is general conditions of contract. A perusal of the document shows that the said contract is not signed by any of the parties. In the reply to the IA the OC denied having executed any such contract. It also can be seen that there is no mention about the said contract, even in the counter. Hence, unless the same is proved to have been executed, the same cannot be appreciated on merits.

10. The contention with regard to re conciliation does not survive. It is for the CD to first reconcile and then proceed with the payments. However even if the debt is agreed to be 5.02 crores, when the amount paid by the CD stands appropriated towards the interest, the principal amount due stands to be beyond the threshold limit and undisputedly it is an Operational Debt falling within the purview of Section 9 of IBC. Then, there is clear default committed by the CD in respect of debt due to the OC. Hence, I am of the considered view that it is a fit case to admit and order initiation of Corporate Insolvency Resolution Process (CIRP) against the CD. The OC did not suggest any name as Insolvency Resolution Professional (IRP) and sought the Tribunal to appoint an IRP. Hence, **Mr. NAMBURU NAGA VENKATA PARDHA SARADHI**, (Registration No. IBBI/IPA003/ICAI-N00415/2022-2023/14118) is appointed as Insolvency Resolution Professional (IRP) while dismissing IA(IBC)/11 /2023.

ORDER

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

- i. **Mr. NAMBURU NAGA VENKATA PARDHA SARADHI**, (Registration No. IBBI/IPA-003/ICAI-N-00415/2022-2023/14118), having office at 11-336/3, Brundavanam, Ambati Nagar, Arun Ice Cream Street, Near Vaagu, Mangalagiri, Guntur District, Andhra Pradesh-522503; e-mail:nnvpsaradhi@gmail.com; Mobile: (+91)

9490233399 is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.

- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.
- v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.
- vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

Sd/- dated 01.09.2023

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu(PS)