**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 871 of 2025**

(Arising out of Order dated 25.04.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-I, in I.A. No.4611/2024 in C.P.(IB)/3025(MB)2019)

**IN THE MATTER OF:**

Descent Buildwell LLP ...Appellant

Versus

Reliance Communications Infrastructure Ltd. & Ors. ...Respondents

**Present:**

| | | |
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| **For Appellant** | **:** | **Mr. Abhijeet Sinha Sr. Advocate with Mr. Ajay Gaggar and Mr. Shreedhar Gagga, Advocates.** |
| **For Respondents** | **:** | **Mr. Vaijayant Paliwal, Ms. Mohana Nijhawan, Ms. Tanya Chib, Advocates for RP.** |

# **J U D G M E N T**

**ASHOK BHUSHAN, J.**

This Appeal has been filed by the Appellant challenging the order dated 25.04.2025 passed by NCLT, Mumbai Bench, Court-I in IA No.4611/2024 filed by the Appellant. IA filed by the Appellant was partly allowed by the impugned order. Aggrieved by which order, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

(i) The Appellant entered into a Lease Deed dated 16.03.2016 with the Corporate Debtor ("**CD**") for period of three years commencing from 01.04.2016 for a consideration amount of

Rs.1,25,000/- plus GST for a month for letting out Godown space in question.

(ii) The Corporate Insolvency Resolution Process ("**CIRP**") against the CD – Reliance Communications Infrastructure Ltd. commenced vide order dated 25.09.2019. Respondent No.2 was appointed as Resolution Professional ("**RP**").

(iii) The Appellant filed a claim for lease rent as per Lease Deed from 25.09.2019 till 19.12.2023.

(iv) In the CIRP of the CD, a Resolution Plan was approved by the CoC on 05.08.2021 and was approved by the Adjudicating Authority also on 19.12.2023. In terms of Resolution Plan, a Monitoring Committee was constituted, which is overseeing the implementation of the Plan.

(v) IA No.4611 of 2024 was filed by the Appellant, where the Applicant prayed for following reliefs:

"a. To direct the Respondent No. 2 and/or 3 to make payment of the entire lease rent alongwith interest @ 18% per annum for the CIRP period of the Respondent No. 1 (from 25th September, 2019 till l9th December, 2023) totaling to Rs. l,40,52,938/- (Rupees One Crore Forty Lakhs Fifty-Two Thousand Nine Hundred & Thirty-Eight Only);

b. To direct the Respondent No. 2 and/or 3 to make payment of lease rent alongwith interest @ 18% per annum for Post CIRP period till July 2024 totaling the amount of Rs. 15,41,806 (Rupees Fifteen Lakh Forty-One Thousand Eight Hundred and Six only);

c. To direct the Respondent No. 2 and/or 3 to make payment of lease rent alongwith interest @ 18% per annum for post CIRP period from August, 2024 onwards till the disposal of the present application;

d. To direct the Respondent No. 2 and/or 3 to make payment of the electricity charges amounting to Rs.6,255/- (Rupees Six thousand Two Hundred Fifty-Five Only) while the warehouse was being operated during the CIRP period of the Respondent No. 1;

e. Any other order/s that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this instant case."

(vi) The IA filed by the Appellant was resisted by the RP. The Adjudicating Authority after hearing the parties held that the amount of lease rent with effect from 25.09.2019 shall be treated as CIRP cost. It was also held that electricity charges shall also be payable by the lessee. The IA was partly allowed by the impugned order.

(vii) Aggrieved by which order this Appeal has been filed.

3. We have heard Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant; Shri Vijayant Paliwal, learned Counsel appearing for the RP; as well as learned Counsel appearing for Respondent No.4.

4. Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant submits that the Appellant is aggrieved by the order insofar as it has not allowed the claim of interest @ 18% on delayed payments on the lease rent payable to the Appellant during the CIRP period. It is

submitted that the lease rent prior to the CIRP period has been accepted with interest by the RP, hence, there was no occasion to reject the claim of interest @ 18% in CIRP cost from 25.09.2019 till 29.12.2023. It is submitted that invoices were raised by the Appellant, where interest was also included. Learned Counsel submits that interest being included in the invoices, the Adjudicating Authority committed error in not granting 18% interest on the lease rent, which was payable with effect from 25.09.2019.

5. Learned Counsel for the Respondent refuting the submissions of the Appellant submits that Lease Deed entered between the parties on 16.03.2016, does not contain any provision for payment of interest. There being no provision of payment of interest on the lease rent, the Appellant cannot claim any interest on the delayed payments. It is submitted that the Lease Deed itself provided for enhancement of rent by 5% upon expiring every year. It is submitted that the Adjudicating Authority has rightly rejected the claim of payment of interest @ 18%.

6. We have considered the submissions of learned Counsel for the parties and have perused the records.

7. A perusal of the order indicates that Godown was not vacated by the RP, hence, the Adjudicating Authority took the view that the amount of lease rent during moratorium period is to be treated as the CIRP cost. There is no challenge to that part of the order by which lease rent has been treated as the CIRP cost with effect from 25.09.2019. The only

grievance raised by the Appellant that interest @ 18% has not been included.

8. Learned Counsel for the Appellant has referred to judgments of this Tribunal in ***Prashat Agarwal vs. Vikash Parasrampuria – Company Appeal (AT) (Ins.) No.690 of 2022*** decided on 15.07.2022. In the above case, this Tribunal took the view that for determining threshold for filing a Section 9 Application, both principal amount and interest on delayed payments have to be computed. It is to be noted that in under heading 'Finding' in paragraph 9 (iv), this Tribunal noted the payment of invoices, which included interest, was made in full. Paragraph 9(iv) is as follows:

> "**9(iv)** We have also noted that Adjudicating Authority has also referred one Judgment of this Tribunal i.e Pavan Enterprises v. Gammon India while allowing interest on delayed payment to be part of total debt for calculation of minimum threshold limit for Section 4 of IBC in the Impugned Order itself (at Page – 22 of the 'Memo of Appeal', Volume-I)
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> > "(f)…..
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> > judgement dated 27th July 2018 in Company Appeal No.148 of 2018 in Pavan Enterprises v. Gammon India, wherein the NCLAT has held that "If in terms of any agreement interest is payable to the Operational of Financial Creditor then the debt will include interest".
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> In this context, as discussed above, all 9 invoices clearly stipulated provision of Interest on delayed payment. It is also observed that payments of three invoices has been made in full and for one invoice in part against said invoices by CD and no dispute on this clause was ever raised as noted from record available before us."

The above was a case where payment of invoices were made, which included the interest.

9. Learned Counsel for the Appellant has also relied on judgment of the Hon'ble Bombay High Court in ***Jatin Koticha vs. VFC Industries Pvt. Ltd. – (2007) SCC OnLine Bom 1092***, where the Court held that it is not necessary that there should be written contract signed by both the parties and suit needs to be based only on the written contract. It was also held that the contract can be found in the form of invoices, which were raised by the defendant along with the delivery of goods. Defendant accepted the delivery of goods along with the invoices without any demur. Learned Counsel for the Appellant has relied on paragraph 6 of the judgment, which is as follows:

> "**6.** Now it is clear that there is no written contract signed by both the parties relied on by the plaintiff. It is not the requirement of the law that it should be a written contract signed by both the parties. What is necessary is that the suit should be based on a written contract. That, one can find in this case, in the form of invoices which were raised on the defendants along with delivery of the goods in pursuance of each purchase order. The invoices, as stated above, contained the terms and conditions. There is a clear parole acceptance of the invoice on the part of the defendants. The defendants accepted delivery of the goods along with the invoice without any demur or suggestion that they do not accept any of the terms whether pertaining to the rate, price, quantity *etc.* It makes no difference therefore that the invoices are not signed by both the parties. I am of view that the invoices must be treated as a written contract and the suit based on such invoices is a suit based on the written contract. This view is fortified by the Madras High Court reported in The Madras Law Journal Reports 1988 page 187 (*Lucky*

*Electrical Stores, by partner Mahendra Kumar Shah* v. *Ramesh Steel House by Partner Babulat*)[1] where the Chief Justice M.N. Chandurkar, rejected the contention similar to the one applied by the defendants in this case. The relevant observation reads thus:

> "……What is necessary for the purposes of this case is that a liquidated demand in money must arise on a written contract. A written contract or a contract in writing need not always be a contract signed by both parties. The Court of Appeal in (*T.A. Rufand Company Ltd.* v. *Pauwels*)[2], (1919) 1 K.B. 660, was called upon to construe the words "contract in writing". The facts of that case were that by contract dated 28th February, 1918 Pauwels had sold to Ruf and Company a quantity of soap. The terms of the contract were contained in a sold note signed only by Pauwels. At the foot of the sold note were the words "Please confirm the above". A dispute arose under the contract as to non-delivery of part of the soap and was referred to arbitration in accordance with the Clause contained in the note. In the award made by the arbitrators there was a recital that "by a contract in writing made by Alphonse Pauwela with T.A. Ruf and Co. Ltd., dated the 28th day of February, 1918, Alphonse Pauwels contracted to sell and deliver" a certain quantity of soap to Ruf and Co. at a certain price and that a dispute had arisen which was referred to arbitration. By the award which was against the purchasers the purchasers were directed "to pay the costs of the reference, arbitration and award, including 361.15s. our fees and expenses in regard to the said arbitration, as we consider that their conduct in not confirming in writing the contract was probably the cause of the dispute". This award was sought to be set aside on the ground that "it is bad in law and shows error on its face and shows further that there was no legal contract binding on the parties". The Divisional Court ordered the award to be set aside on the ground that on the face of the award the arbitrators had treated as a contract in writing binding upon

both parties that which was signed by one of the parties only and was therefore not a contract in writing. Ruf and Company appealed against this judgment. Warrington L.J., in his judgment referred to the fact that though written confirmation was not sent by the purchasers, the arbitrators had come to the conclusion that there was a parol acceptance by Ruf & Co. of the terms of the sold note, and observed as follows:—

"Taken in conjunction with the rest of the award they seem to me to indicate that the arbitrators found that Ruf and Co." had confirmed the contract though not in writing, and if so they may quite properly refer to the contract as a "contract in writing". Although the memorandum of it was signed by one party only"."

10. There can be no dispute to the proposition that written contract is not necessary to file a claim. The present is a case where there is a written contract, i.e. Lease Deed dated 16.03.2016 entered between the parties. Insofar as the claim of interest as per invoices are concerned, the issue with regard to IBC has been considered and decided by this Tribunal in large number of cases. The judgment of this Tribunal in **Prashat Agarwal** (supra) was a case where payment including the interest in the invoices was made by the CD. Thus, the claim of interest was accepted by the CD and given effect too. The present is not a case where payment of any interest along with lease rent has been made by the CD.

11. We may notice a recent judgment of this Tribunal in ***Company Appeal (AT) (Insolvency) No. 386 of 2025 – M/s SNJ Synthetics Ltd. vs. M/s PepsiCo India Holdings Pvt. Ltd.*** decided on 07.05.2025. This Tribunal was dealing with a case where interest was sought on delayed

payments on the basis of invoices. This Tribunal in paragraphs 12 and 13 laid down following:

> "**12.** Since there has been no amendment of the Agreement, the terms agreed between the parties in the Supply Agreement prevail over unilateral invoices. Even though invoices can play a crucial role in defining the rights and obligations between parties, however, there has to be an element of mutual consent, which can be discernible from conduct. When the ingredient of levy of interest on delayed payment is absent in the written contract, stipulation of interest payment in invoices can override the written contract only if there is mutual consent and mutual understanding between the parties in this regard which in the present case has not been demonstrated by conduct and practice. There is no evidence of payment of interest by the Respondent which has been substantiated by the Appellant. We are therefore inclined to agree with the Adjudicating Authority that unilaterally generated invoices signed by only one party cannot overrun or recast the terms of bi-partite agreements and create binding obligations on the other party to pay interest.
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> **13.** In this regard attention has been adverted by the Respondent to the judgement of this Tribunal in ***Krishna Enterprises vs. Gammon India Limited in CA (AT) (Ins) No. 144 of 2018*** wherein it has been held therein that if no interest was payable, in terms of the contractual agreement, then only the principal amount would constitute the claim, basis which Section 9 application can be filed. We find the ratio of the above judgment to be squarely applicable to the facts of the present case and for easy reference reproduce the relevant portion of the said judgment as below:
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> > *"4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principle amount is to be treated as*

*the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.*

*5. In the present appeals, as we find that the principle amount has already been paid and as per agreement no interest was payable, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. If for delayed payment Appellant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer."*

*(Emphasis supplied)*"

12. Thus, the law as explained by this Tribunal in the above case is that claim of interest arising from invoices can be considered, where the payment of interest is proved or conduct of the party is proved, where stipulation of payment of interest has been accepted. When the written contract does not contemplate interest on delayed payments, by mere inclusion of interest in the invoices unilaterally is of no consequence. Acceptance of payment of interest by a conduct or actual payment by the CD has to be proved to decipher any unwritten contract between the parties. It is to be noticed that this Tribunal in **SNJ Synthetics Ltd.** (supra) has also noticed the judgment of this Tribunal in **Prashat Agarwal** in paragraph 14 and following has been laid down:

> "**14.** We also agree with the Adjudicating Authority that the facts of the present case are distinguishable from the ***Prashat Agarwal judgment supra*** in view of the fact that in the present case the payment of interest clause on delayed payment does not figure in the Supply Agreement which was a bi-partite agreement. Moreover, the invoices basis which interest has been claimed by the Appellant in the present case were not even counter-signed by the

> Respondent thereby making the imposition of interest unilateral. There is nothing to substantiate that the Respondent has accepted the obligation to pay interest on delayed payment. Even the reliance placed on ***Anuj Sharma judgment supra*** also does not come to the rescue of the Appellant as in that case also the Purchase Order containing interest clause on advance payment was issued basis a Distributorship Agreement which contained the terms of payment and delivery."

13. To the same effect is another judgment of this Tribunal in ***Company Appeal (AT) (Insolvency) No. 1227 of 2019 – S. S. Polymers vs. Kanodia Technoplast Ltd***. decided on 13.11.2019. In paragraph 4, following was laid down by this Tribunal:

> "**4.** The Learned Counsel for the Appellant relied on 'Invoices' to suggest that in the 'Invoices', the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'."

14. There is another judgment of this Tribunal i.e. ***Shitanshu Bipin Vora vs. Shree Hari Yarns Pvt. Ltd. – Company Appeal (AT) (Ins.) No.2204 of 2024*** decided on 16.04.2025, where it was held that in the absence of an Agreement between the parties, calculation of interest cannot be agreed. The submission of Appellant based on admission of pre CIRP claim which included interest by RP is not decisive of the issue regarding entitlement of interest of 18% as CIRP cost.

15. The CIRP cost, which has not been included by the Adjudicating Authority was based as per Lease Deed entered into between the parties, which Deed has already come to an end before commencement of the

CIRP. We do not find any substance in the submission that CIRP cost ought to have been included 18% interest on the delayed payment. There is no merit in the Appeal. The Appeal is dismissed. There shall be no order as to costs.

**[Justice Ashok Bhushan]**
**Chairperson**

**[Barun Mitra]**
**Member (Technical)**

**NEW DELHI**

**6th August, 2025**

Ashwani