

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

IBA/294//2020 filed 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.

In the matter of M/s. Delight Switchgears Private Limited

M/s. Fomra Electricals
(Partnership Firm)
No. 250, Govindappa Street,
Chennai-600001.

---Operational Creditor

Vs.

M/s. Delight Switchgears Private Limited
(CIN: U30007TN1995PTC030038)
No. 191, Thambu Chetty Street,
Parrys Chennaki-600001

---Corporate Debtor

CORAM

R. SUCHARITHA, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)

For Operational Creditor: *Shri. A.G. Sathyanarayana, Advocate*

For Corporate Debtor : *Shri. Chethan Sagar, Advocate*

Shri. V.V. Sivakumar, Advocate

ORDER

Per : R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on: 27.04.2021

Under consideration is an application filed pursuant to

Section 9 of the Insolvency and Bankruptcy Code, 2016 read with

IBA/294//2020

In the matter of M/s. Delight Switchgears Private Limited

Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short “AAA Rules-2016”) by M/s. Fomra Electricals(Partnership Firm) (hereinafter referred to as “Operational Creditor”) for initiation Corporate Insolvency Resolution Process (in short “CIRP”) against M/s. Delight Switchgears Private Limited (hereinafter referred to as “Corporate Debtor”) on the ground that Corporate Debtor defaulted an amount of Rs.28,02,766/- together with interest at the rate of 24% per annum.

2. In Part-IV of the application, the learned counsel for the Applicant submits that a total amount of debt is Rs.16,20,000/- together with interest at 24% per annum from the due date of respective invoices till 12.10.2019 and liable to claim future interest at 24% till the date of its realization. In the same column, a sum of Rs.49,052/- has been paid against an invoice and remaining ones were due and payable against the supply of electrical components. The amount claimed to be in ‘default’ is sum of Rs.28,02,766/-. In support of the claim, the applicant states that 13 items are reflected



in the purchase order dated 16.06.2017 issued by Corporate Debtor and the same is enclosed at page.12 along with the application. However, there is no signature reflected in the purchase order on behalf of the Corporate Debtor.

3. Further, out of 13 items as seen in the purchase order, the applicant admits that only a few items were delivered to the Corporate Debtor and the invoices were raised towards those supplies. Out of those invoices, only one invoice was due and payable and the same is enclosed at page.11 of the application (copy is not clear). This invoice is dated 29.06.2017. According to this invoice, a total amount of Rs.35,07,276/- is due and payable by the Corporate Debtor. However, in the invoice enclosed herein, there is no seal of the Corporate Debtor towards a token of acceptance of supply.

4. Counsel for the Applicant states that out of total invoice amount (page.10), a sum of Rs.19,77,276/- was received by the Applicant and the balance amount due and payable is Rs.16,20,000/- and the interest portion is Rs. 28,02,766/- at the rate



of 24% per annum as on 12.10.2019. It is further stated that an affidavit in support of the claim has been enclosed at page 15 of the application wherein the applicant has clearly stated that the Operational creditor is entitled to recover a total sum of Rs.16,20,000/- with interest at 24% from the due date of respective invoices till 12.10.2019. Further, the Applicant has sent a demand notice under Section 8 of IBC, 2016 on 19.10.2019 and the same was enclosed in page.6 of the application. No reply was received from the Corporate Debtor. As per the demand notice, the applicant has stated that principal amount due is Rs.16,20,000/- out of the total invoice amount of Rs.35,97,276/-. In the demand notice, the applicant has also claimed Rs.11,82,766/- as interest at the rate of 24% per annum for the delayed payment.

5. In the Counter filed by the respondent on 08.10.2020, the Corporate Debtor has denied all the allegations of the applicant, as well as stated that there is suppression of material facts on the part of the applicant. Further, the Operational Creditor has

suppressed the details relating to a dispute raised by the Corporate Debtor vide e-mail dated 08.11.2019 (Page.8) wherein the Corporate Debtor has informed that the total outstanding principal amount claimed (Rs.16,200/-) is not correct and denied. Hence, there exists dispute between the parties in respect of belated payment of the alleged claim much before the initiation of proceedings under IBC.

6. It is stated by the Corporate Debtor that Corporate Debtor approached the Operational Creditor for supply of electrical components and issued various purchase orders including the present purchase order bearing number DSPL/KKS/2345/17 dated 20.06.2017 for a sum of Rs.56,18,413.92 for which the Operational Creditor supplied the materials and raised the following three invoices:

S.No.	Invoice No.	Date of Invoice	Invoice Value (in Rs)
1.	HOLS/17-18/02005	26.06.2017	14,65,865.00
2.	HOLS/17-18/02051	26.06.2017	13,08,709.00
3.	HOLS/17-18/02080	29.06.2017	35,97,276.00

7. The Corporate Debtor had made payments for invoices (in S.No.1 and 2) above to the tune of Rs.27,74,574/- and for impugned invoice dated 29.06.2017 in S.No.3 above, a sum of Rs.19,77,276/- was also paid leaving an outstanding payable to the tune of Rs.16,20,000/-.

8. It is further stated that despite the dispute that had arisen between the parties, the Corporate Debtor made payment of Rs.14,41,131/- (Rs.1,50,000/- on 30.12.2019 and Rs.12,91,131/- on 24.01.2020) out of the aforesaid balance of Rs.16,20,000/- to the Operational Creditor. It is pertinent to mention here that this application under Section 9 was filed on 13.01.2020 and the respondent made payment of Rs.12,91,131/- on 24.01.2020 during the pendency of this IBC proceedings and that the applicant has accepted the payment made by the respondent "without protest". For the balance amount of Rs.1,78,869/- and the same was adjusted/set off against the invoice dated 28.03.2019 (Page.15). Further, the averment made by the Operational Creditor that the

invoice amount has to be paid within a period of 30 days is also false as there is no contractual stipulation on the period of payment. Therefore, the claim of Rs.11,82,766/- towards interest portion is liable to be rejected. The Corporate Debtor claims that as on date, there are no outstanding dues payable by the Corporate Debtor to the Operational Creditor as all the payments pertaining to the above impugned invoice dated 29.06.2017 stand settled between the parties.

9. Heard both the parties. It is clearly brought to our notice that the amount claimed by the applicant is based on the delayed payment of the invoice and interest thereon at the rate of 24% per annum. The applicant relies only on the document at page No.11 filed along with the application in which there is no seal of the Corporate Debtor. Whether the Applicant is entitled to claim interest at the rate of 24% per annum based on the invoice during business transaction between the parties is the subject matter of the trial and cannot be decided in summary suit. This Adjudicating Authority cannot isolate one invoice and conclude that amount is

due and payable. Furthermore, this application has been filed to claim the interest at the rate of 24% per annum for the delayed payment to the said invoice. Hence, whether the applicant is entitled to the interest at the rate of 24% per annum cannot be decided, without trial based on the invoice which is not signed by the Corporate Debtor in token of acceptance. There are several other transactions and business dealings but the applicant has filed only one invoice. Hence, there is clearly suppression of material facts.

10. It is admitted by the counsel for applicant that, amount due under invoice has been paid by Corporate Debtor. The question before us is whether Operational Creditor is entitled to claim "interest on the delayed payment". If so, what is the rate of interest the applicant is entitled to and from which period is the amount, if any, is due and payable? Furthermore, whether the rate of interest was mutually agreed between parties and both are bound by it? We cannot conclude that based on the copy of invoice that

applicant is entitled for the interest at the rate of 24% per annum since it is the subject matter of the City Civil Court to adduce evidence and detailed trial is required to conclude whether any interest is due and payable by the Corporate Debtor to the Operational Creditor, under invoice?

11. In terms of the above circumstances, this application IBA/294/2020 is hereby **dismissed**. No costs.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

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