

**NATIONAL COMPANY LAW TRIBUNAL**  
**CHANDIGARH BENCH (COURT-I)**

**Company Petition No. (IB)-124/CHD/HP/2019 & IA No.**  
**460/2023**

**IN THE MATTER OF:**

**M/s. Steel Mech Engineers**

D-5, Highland Park, Jingles Nest Mulund  
Colony, Mulund (W) Mumbai-400082

**...Applicant**

**VERSUS**

**M/s Inox Wind Limited,**

Plot No.1, Khasra Nos 264 to 267,  
Industrial Area, Village- Basal,  
Una-174303, Himachal Pradesh  
Registered Email:-investors.iwl@inoxwind.com  
Corporate Office: Inox Tower, Plot No.17,  
Sector 16A, Noida 201301,  
Uttar Pradesh

**... Respondent**

**Section: 9 of the IBC, 2016**

**Order Delivered on: 23.02.2024**

**CORAM**

**SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (JUDICIAL)**

**SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For Applicant** : Mr. Sudhir Kumar Dash, PCA  
: Advocate Piyali Paul,

**For Respondent** : Advocate Anand Chhibbar,  
: Advocate Rajat Khanna,  
: Advocate Vijay Pratap Singh,  
: Advocate Vishal Saini,

## **ORDER**

**PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)**

M/s Steel Mech Engineers (for brevity, hereinafter referred to as the '**Applicant**') has filed the present 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 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Inox Wind Ltd (for brevity, hereinafter referred to as the '**Respondent**').

2. The Respondent namely, M/s Inox Wind Ltd is a Company incorporated on 09.04.2009 with CIN L31901HP2009PLC031083 under the provisions of the Companies Act, 1956 having its registered office at Plot No. 1, Khasra Nos 264 to 267, Industrial Area, Village-Basal, Himachal Pradesh, Una - 174303, which is within the jurisdiction of this Tribunal. The Nominal Share Capital of the Respondent is Rs.500,00,00,000/- and the Paid-up Share Capital is 221,91,82,260/- as per the Master Data annexed.

3. The Applicant is a partnership Firm incorporated under the Indian Partnership Act 1932 and is a manufacturer & supplier of multiple Plant, Machinery, tools, and fabrication and foundry items and incidental acts to complete a project. It is claimed by the applicant that it supplied goods to the Respondent as per quantity, specification and quality prescribed as per purchase orders and invoices of supply.

4. The particulars of the Operational Debt in terms of the total amount of default, and the date of default are mentioned in Part IV of the application, the relevant extract of which is reproduced below for the sake of convenience:

**Part-IV**

<b>PARTICULARS OF OPERATIONAL DEBT</b>		
1	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	<b>Debt Due 1,88,53,723/- (Rs. 97,34,507/- plus delayed payment interest @ 20.25% per annum as per MSME regulations amounting to Rs. 91,19,216/-)</b>
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE	<b>Default:- 1,88,53,723/- from 21.01.2017 i.e. 30 days from the date of last invoice as per the terms of Purchase Order.</b>

	DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	
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5. Thus, as per Part IV of the application (ibid), the Applicant has claimed the unpaid Operational Debt of Rs.1,88,53,723/- including interest and relied upon 21.01.2017 as the date of default.

6. It is stated by the Applicant that since the Respondent did not make the due payment of its operational debt, it issued a Demand Notice dated 27.10.2018 under Section 8 of IBC 2016 which was served to the Respondent at its registered office vide speed post. The applicant has placed Section 9(3)(b) affidavit on record (Page 27) stating that neither it received any reply of the demand notice nor the respondent raised any dispute with regard to the unpaid debt.

7. On issuance of the notice, the Respondent filed its reply dated 03.08.2022 and opposed the application on the following grounds:

- i) The total amount of alleged operational debt claimed by the OC is Rs.1,88,53,723/- [comprising of Principal amount receivable on Invoices outstanding of Rs.97,34,507/- along with interest @ 20.25% per annum as per MSME Regulations.
- ii) The principal amount of debt standing at Rs.97,34,507/- has already been paid in full by the CD after filing of this petition. Thus, the present petition is rendered infructuous on account of the payment of the principal debt to the OC, who is now staking its claim regarding the alleged interest charged @ 24% per annum on the principal debt, in absence of any agreement enabling charging of any such penal interest.
- iii) It is a settled law that once the principal amount has entirely been paid and the issue is only regarding to

interest, then the application under Section 9 of the Code is not maintainable as the spirit of the Code is for 'resolution of debt' and 'not for recovery'.

- iv) The interest cannot be awarded merely on the basis of a term in a bill or invoice, unless the OC proves that such provision is based on a contract or agreement on the part of the purchaser to pay interest and it is a settled law that in the absence of an agreement stipulating 'interest', interest is not chargeable. It is further a settled law that IBC does not empower this Adjudicating Authority to impose interest on the parties, much less determine the rate of such interest.
- v) The Respondent has placed reliance upon the Judgment of the Hon'ble Supreme Court of India in the matter of **"Mobilox Innovations (P) Ltd. Vs Kirusa Software (P) Ltd."**, which held that IBC is not intended to be a substitute to a recovery forum.

8. The Applicant also filed its rejoinder dated 05.12.2022 mainly stating the following :

- i) The Applicant is an MSME unit and is under statutory safeguard with entitlement to receive a payment within 45 days which fact was already conveyed to the Respondent vide email dated 20.01.2018 and 02.07.2018. The CD owed Rs. 91,19,216/- as interest

@20.25% per annum (i.e., 3 times of the bank interest under the MSME Act) being interest accruing till 30.09.2018, which the Respondent has deliberately defaulted.

ii) After coming to know that the CD has an even illegal modus operandi to usurp money and goods of the OC on frivolous allegations, the petitioner stopped further supplying goods. The last business date is 22.12.2016, and no supply has been made by the Petitioner thereafter.

iii) The annual balance sheet of the CD also discloses its liability to pay interest owed to MSME suppliers. As per the information/auditor's remark to published financials for the F.Y. 2018-19, the company owed Rs.163.10 to MSME enterprises, to which it further owed Rs.195.28 lakhs towards accrued interest.

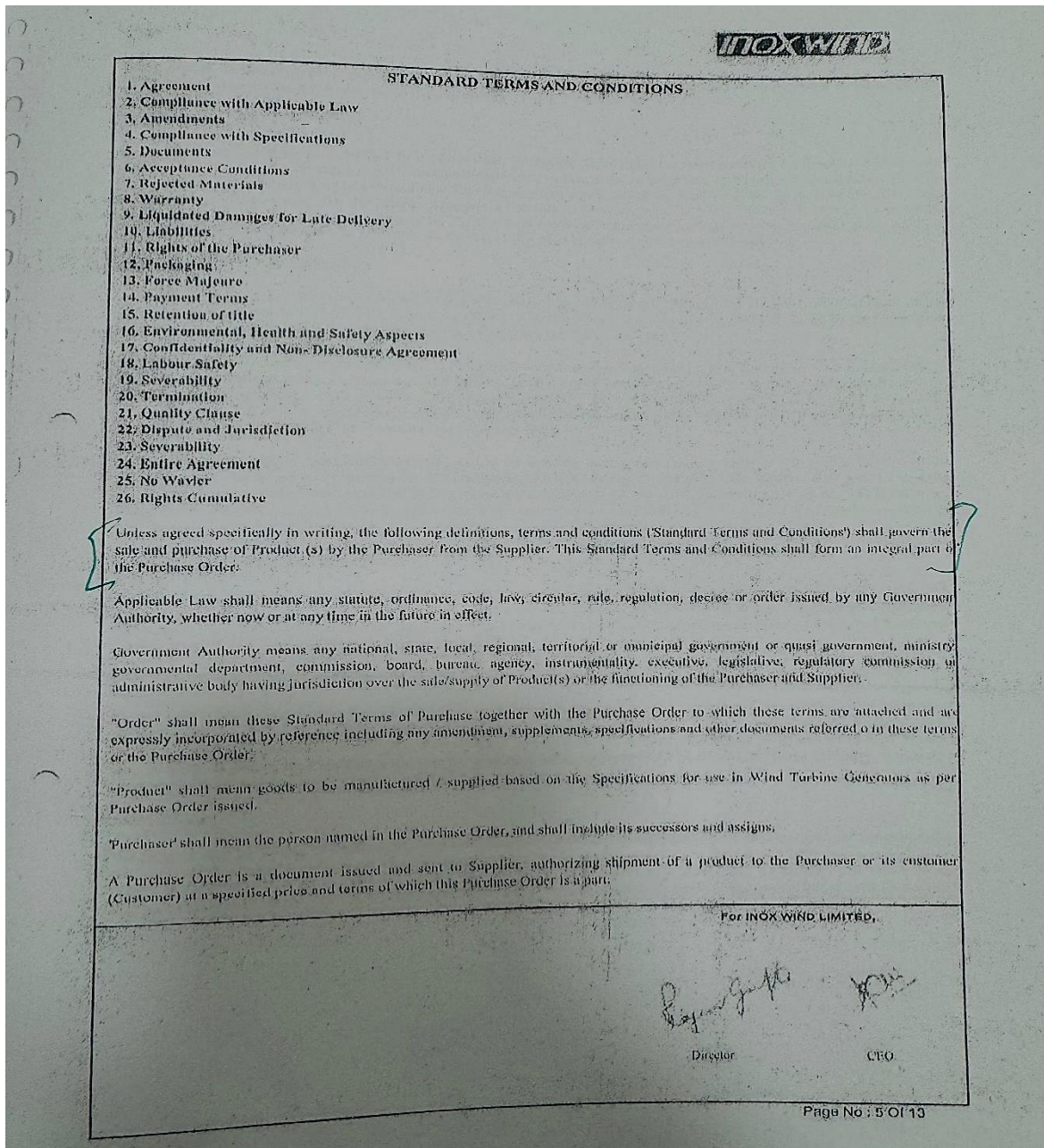
(i) The OC has placed reliance upon the two Judgments on the point "*whether the OC can demand payment of interest even though the same is not agreed*" namely, "**Jyothi Limited Vs. Boving Fouress Limited**", passed by Hon'ble Karnataka High Court; and "**Gandhar Oil Refinery (India) Limited Vs. City Oil Private Limited**" passed by NCLT, Kolkata Bench.

9. We heard the parties and perused the pleadings on record including written submissions filed by both parties. The parties are *ad idem* that the principal debt amounting to Rs.97,34,507/- has already been paid in full by the Respondent. This fact has been duly recorded in the order dated 25.09.2023 of this Adjudicating Authority.

10. Now, what is being claimed by the Applicant is the delayed payment interest of Rs. 91,19,216/- @ 20.25% per annum (i.e., 3 times of the bank interest as per the MSME Act) being the interest accrued till 30.09.2018. The Applicant has further contented that there was no pre-existing dispute between the parties. *Per contra*, the respondent has contented that the full amount of the principal debt has since been paid and the interest clause cannot be accepted unless it was admitted and accepted by the Respondent. Furthermore, the respondent referred to the email dated 06.09.2018 (annexed by the Applicant with the application itself) claiming a pre-existing dispute between the parties prior to the issuance of demand notice.

11. After taking note of the fact that the principal amount of debt has already been discharged, the issue which emerges for our adjudication is **“Whether the CIRP can be initiated / triggered solely on the basis of the un-paid amount of interest when the entire principal amount of debt has been discharged by the Corporate Debtor”**.

12. The Respondent has contended in this regard that no interest clause was admitted while availing the purchases and as per the “Standard Terms and Conditions” as placed by the applicant in its application (at Page No.56-64). Here we refer to the relevant pages 56 & 60, which read thus:



XXXX

XXXX

XXXX

**STANDARD TERMS AND CONDITIONS**

1. Agreement
2. Compliance with Applicable Law
3. Amendments
4. Compliance with Specifications
5. Documents
6. Acceptance Conditions
7. Rejected Materials
8. Warranty
9. Liquidated Damages for Late Delivery
10. Liabilities
11. Rights of the Purchaser
12. Packaging
13. Force Majeure
14. Payment Terms
15. Retention of title
16. Environmental, Health and Safety Aspects
17. Confidentiality and Non-Disclosure Agreement
18. Labour Safety
19. Severability
20. Termination
21. Quality Clause
22. Dispute and Jurisdiction
23. Severability
24. Entire Agreement
25. No Waiver
26. Rights Cumulative

Unless agreed specifically in writing, the following definitions, terms and conditions (Standard Terms and Conditions) shall govern the sale and purchase of Product (s) by the Purchaser from the Supplier. This Standard Terms and Conditions shall form an integral part of the Purchase Order.

Applicable Law shall mean any statute, ordinance, code, law, circular, rule, regulation, decree or order issued by any Government Authority, whether now or at any time in the future in effect.

Government Authority means any national, state, local, regional, territorial or municipal government or quasi government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, regulatory commission or administrative body having jurisdiction over the sale/supply of Product(s) or the functioning of the Purchaser and Supplier.

"Order" shall mean these Standard Terms of Purchase together with the Purchase Order to which these terms are attached and are expressly incorporated by reference including any amendment, supplements, specifications and other documents referred to in these terms or the Purchase Order.

"Product" shall mean goods to be manufactured / supplied based on the Specifications for use in Wind Turbine Generators as per Purchase Order issued.

"Purchaser" shall mean the person named in the Purchase Order, and shall include its successors and assigns.

A Purchase Order is a document issued and sent to Supplier, authorizing shipment of a product to the Purchaser or its customer (Customer) at a specified price and terms of which this Purchase Order is a part.

For INOX WIND LIMITED,

Director

CEO

On the perusal of the aforesaid document, we find that no interest was payable from the due date.

13. In this backdrop, we consider it relevant to refer to the Judgment of Hon'ble NCLAT in the matter of **S. S. Polymers v. Kanodia Technoplast Ltd. in Company Appeal (AT) (Insolvency) No. 1227 of 2019, dated 13.11.2019**. The relevant extracts of the judgment (supra) are given below:

*“5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the ‘Corporate Debtor’ paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the ‘Corporate Debtor’ and which is barred in view of Section 65 of the I&B Code..”*

14. In view of the aforesaid judgment, it can be inferred that the “interest” component alone cannot be claimed or pursued, in absence of the debt, to trigger a CIR process against the corporate Debtor. Further, in our considered view, the application pursued for realization of the interest amount alone is against the intent of the IBC, 2016 as this Adjudicating Authority is not a Court of recovery.

15. Even otherwise, the Respondent has referred to the email dated 06.09.2018 claiming a pre-existing dispute between the parties prior to the issuance of demand notice. Hence, we examine the contention of the Respondent regarding the pre-existing dispute. In this context, we refer to the E-mail dated 06.09.2018 from Respondent to the Applicant (placed by the Applicant in its application at Pg no 153), which reads as reproduced overleaf:

**From:** Abhijeet Patil [mailto:abhijeet.p@steelprojects.co.in]  
**Sent:** Tuesday, September 04, 2018 12:14 PM  
**To:** shekhar.dubey@inoxwind.com  
**Cc:** subrao.adkurkar@inoxwind.com; prosanto.mullick@inoxwind.com; pulok.mondal@inoxwind.com; rajeev.singh@inoxwind.com; manmohan.pokhariya@inoxwind.com; aravind.udupi@inoxwind.com; bhavin.lad@inoxwind.com; shripad.kulkarni@inoxwind.com; rajinder.singh@inoxwind.com; Sundeep Jotwani; Yogendra Singh; venukumar nair  
**Subject:** IR FOR PROJECT HH92

[Quoted text hidden]

Shekhar Dubey <shekhar.dubey@inoxwind.com> Thu, Sep 6, 2018 at 10:21 AM  
To: Sundeep Jotwani <sundeep.j@steelprojects.co.in>  
Cc: subrao.adkurkar@inoxwind.com, prosanto.mullick@inoxwind.com, pulok.mondal@inoxwind.com, rajeev.singh@inoxwind.com, manmohan.pokhariya@inoxwind.com, aravind.udupi@inoxwind.com, bhavin.lad@inoxwind.com, shripad.kulkarni@inoxwind.com, rajinder.singh@inoxwind.com, Yogendra Singh <yogendra.s@steelprojects.co.in>, venukumar nair <nairvenukumar@gmail.com>, Abhijeet Patil <abhijeet.p@steelprojects.co.in>

Dear Mr. Sundeep,

Based on the inspection offer for tower internal material on date 05.09.2018 at your end, below are the observations from rectifications.

- Rusting observed many components, need to be rectify and reoffer.
- Zinc dust and high points of Zinc observed on beams and platforms. Need to clean and reoffer for inspection.
- Warpage observed in platforms assembly, need to be rectify and reoffer for inspection.
- Spatters & Slag found on many joints in beam, need to be remove spatters & slag from welding joints.

Please reoffer material after rectification of above-mentioned observations.

Thanks & Regards

*Shekhar S Dubey*

Deputy Manager- Corp. QA

Inox Wind Limited

Inox Tower, Plot No-17

Sector-16A, Noida-201301

Phone: +91-120-6149610

Thus, on the perusal of the E-mail (ibid), we find that the Respondent had raised dispute regarding the quality of the material supplied by the Applicant as back as on 06.09.2018. As already noted in para 6 above, the Applicant issued the demand notice under Section 8(1) of IBC, 2016 on 27.10.2018. Thus, we find that there was a 'dispute' between the parties prior to the issuance of the demand notice.

In this context, we refer to the judgment of the Hon'ble Supreme Court ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018)*** 1 SCC 353 wherein it was held that:

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. **The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.**”*

(Emphasis Supplied)

16. Thus, we find that the present Application is not maintainable both on the grounds of maintainability as well as on the pre-existing dispute. **Accordingly, the Application is dismissed.**

17. However, nothing expressed herein shall be construed as an opinion in respect of the rights of both parties to agitate before any other forum.

**IA No. 460/2023**

18. The IA No. 460/2023 seeking claim of additional interest for the delayed period is **dismissed** in view of the aforesaid order in the main Application. The Applicant, however, would be at liberty to pursue its claim, if any, in any other forum.

Sd/-

**(L. N. GUPTA)**  
**MEMBER (T)**

Sd/-

**(HARNAM SINGH THAKUR)**  
**MEMBER (J)**