IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT - II

C.P. (IB)- 1710 (MB)/ 2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Jai Corp Limited,
Having its registered office at: A-3, M.I.D.C. Industrial Area, Nanded- 431 603 Maharashtra.

……Operational Creditor

Vs

Capital Nonwovens Private Limited,
(CIN No.: U17290MH2011PTC217981)
Having its Registered Office at: Survey No. 55, Village Gonde, Taluka Igatpuri, Nashik – 422 403, Maharashtra.

…….Corporate Debtor

Order delivered on:- 21.10.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Ms. Suyesha Karkarla, Advocate

For the Corporate Debtor : Mr. Mayur Agarwal, Advocate

ORDER

Per :- Shyam Babu Gautam, Member Technical

1. This Company Petition is filed by *Jai Corp Limited* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Capital Nonwovens Private Limited* (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Operational Creditor. This Petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Principal sum of **Rs.19,66,159/-** (Rupees Nineteen Lakhs Sixty-Six Thousand One Hundred Fifty- Nine Only) together with interest @24% per annum of **Rs. 9,54,749/-** (Rupees Nine Lakhs Fifty-Four Thousand Seven Hundred Forty-Nine) aggregating to a sum of Rs.29,20,908/- (Rupees Twenty-Nine Lakhs Twenty Thousand Nine Hundred and Eight Only). Out of this aggregate amount, Rs. 1,66,159/- stands repaid, hence the total claim amount now is **Rs. 27,54,749/-** (Rupees Twenty-Seven Lakhs Fifty-Four Thousand Seven Hundred Forty-Nine Only).

3. The Corporate Debtor approached the Operational Creditor for the supply of certain quantity of goods being 48,000 kgs of Polypropylene Fiber. The Corporate Debtor raised a **Purchase Order dated 13th January 2016** for the same which was accepted by the Operational Creditor and the goods were supplied by the Operational Creditor. Thereafter, two invoices dated 27th February 2016 and 28th February 2016 were raised which contained a provision for charging interest @24% per annum on overdue payments. Copies of the Purchase Order and the Tax invoices have been duly annexed to this Petition.

4. Despite several reminders, the Corporate Debtor failed to repay the amounts due. Subsequently, the Operational Creditor issued a **Demand Notice dated 28th March 2018** demanding payment of Rs. 29,20,908/- within 3 days of which, an amount of Rs. 1,66,159/- was credited by the Corporate Debtor in part payment of the total outstanding amount. The Corporate Debtor replied to the said Notice vide **Letter dated 19th April 2018** wherein they denied any liability to pay the amounts due citing that they had not given orders for any such material and accepted the material keeping in mind the long-standing business relations between them and only after repeated requests from the Operational Creditor. Since no payment was received by the Operational Creditor, they filed the present Petition on 9th May 2018.

5. Post this, in due course, the Corporate Debtor paid a sum of **Rs. 19,66,159/- Lakhs (the Principal amount due)** over a period of two years in scattered instalments. The Corporate Debtor wrote

to the Operational Creditor on several occasions stating that the delay in payments were due to labour issues and adverse market conditions because of which their business was affected and that they intend to pay off the remaining debt in due course. Further, pursuant to the Order dated 2nd January 2020, the Operational Creditor amended the total claim amount and revised it to Rs. 9,54,749/- which is the interest component up to 1st April 2018. The Corporate Debtor filed a **Reply** to this Petition **dated 18th July 2021** wherein it was submitted that the claim of the Operational Creditor for solely the interest component of the debt does not qualify as operational debt within the meaning of Section 5(21) of the Code and cannot be a ground for initiating CIRP against the Corporate Debtor.

FINDINGS

6. We have heard the submissions of the Counsel appearing for the Operational Creditor and Counsel appearing for the Corporate Debtor. On perusal of the Petition and the documents annexed, it is evident that the issue for consideration before us is whether CIRP can be pursued for realization of the interest amount alone.

7. To examine this issue, the following facts are relevant. The Corporate Debtor has time and again acknowledged the existence of the operational debt and sought time to repay the same. Undisputedly, the payment was delayed by the Corporate Debtor but it is the Operational Creditor's own submission that an amount of Rs. 19,66,159/- was repaid by the Corporate

Debtor over a period of two years thus paying back the entire principal amount out of the total outstanding debt. Pursuant to the Order of this Bench dated 13th February 2020, the Operational Creditor revised the Petition and amended the claim amount to Rs. 9,54,749/- which solely includes the interest component that remains unpaid till date. In this regard, we note that it is now settled law that interest, in itself, is not sufficient to maintain a Petition under Section 9 of the Code.

8. It is the argument of the Operational Creditor that the Corporate Debtor never objected to the interest clause in the invoices raised and agreed to the interest rates provided therein. At this stage, it is pertinent to note the observations made by the NCLAT in the matter ***of S.S. Polymers vs. Kanodia Technoplast Limited [Company Appeal (AT) (Insolvency) No. 1227 of 2019]***:

> *"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'."*

This makes it clear that the interest clause in the invoices cannot be treated as an agreement between the parties for claiming interest and moreover, such interest amount cannot be the sole reason for continuing proceedings against the Corporate Debtor under this Code after the principal amount has been repaid.

9. We further note that after the payment of the entire principal amount, there were talks for settlement of the interest amount

too; however, such talks failed. The Operational Creditor prayed for amendment of the Petition which was allowed by this Bench to the extent of revising the claim amount by taking due notice of the fact that all settlement talks between the parties have broken down. The Operational Creditor now continues to proceed against the Corporate Debtor for the interest amount which was considered to be barred by the NCLAT in ***S.S. Polymers*** (supra) in the following words:

> *"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."*

We therefore infer that by continuing to proceed against the Corporate Debtor for the interest amount alone, all the Operational Creditor intends is to recover and realise their debt which is against the letter and spirit of the Code.

10. In view of the above, we are of the opinion that the instant Company Petition is liable to be dismissed.

Accordingly, this Petition is dismissed.

The Registry is hereby directed to communicate this order to both the parties immediately.

Sd/-
SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-
JUSTICE P. N. DESHMUKH
(MEMBER JUDICIAL)

AN
21.10.2022