IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP(IB) No. 62 /KB/2021

In the matter of:

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 Plastofab, a partnership firm having registration number L78026 and having its office and place of business at 3, Ambika Mukherjee Road, Kolkata-700056, in the State of West Bengal.

.....Operational Creditor

-Versus-

Electroteknica Switchgears Private Limited, a company incorporated under the Companies Act, 1956 and being a company under the Companies Act, 2013, having Corporate Identification No- U28113WB1988PTC044317 and its registered office at 1/5A, Raja Basanta Roy Road, P.S. Kolkata- 700026, and also having its place of business at Sw. Gr. Divn, Balaka Scheme, Kalitala, P.O. Joka, 24 Parganas (South), Kolkata- 700104, in the State of West Bengal.

.... Corporate Debtor

Date of Hearing :7th April 2022

Date of pronouncing the order: 20th May 2022

Coram:

Shri Rohit Kapoor, Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

Appearances (via video conferencing):

For Operational Creditor	:	Mr. Rahul Auddy, Advocate
		Mr. Aditya Gooptu, Advocate
For Corporate Debtor	:	Mr. Naseeb Khanjoy, Advocate
		Mr. Sourav Chatterjee, Advocate

Mr. Kallol Maiiti, Advocate

ORDER

Rohit Kapoor, Member (Judicial):

1. This Court convened through video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **M/s Plastofab** (**Operational Creditor**), seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **Electroteknica Switchgears Private Limited** ("**Corporate Debtor**").
3. The case of the Operational Creditor is that in or about 2009, an agreement was entered between the Corporate Debtor and the Operational Creditor herein for the supply of Epoxy resin molded component and instrument transformer for switchgear in presence of Mr. Saibal Gupta for supplying of goods. Accordingly, various invoices were raised by the Operational Creditor between 26.11.2012 and 28.11.2013, which were received by the Corporate Debtor without demur. However, the Corporate Debtor failed to make full payment of the sums due thereunder.
4. In or around 2012, hundis were sent by the Corporate Debtor for encashment by the Operational Creditor towards payment of the said dues, however, the same were not encashed due to insufficient funds.
5. The Operational Creditor's advocate issued a Demand Notice dated 23.06.2015 to the Corporate Debtor, thereby demanding the repayment of ₹65,42,956/- along with interest @18%. Thereafter, a letter of acknowledgement dated 21.07.2015 was sent by the Corporate Debtor for negotiation to mutually settle the old dues. Accordingly, a meeting between the parties took place on 7.08.2015 wherein an agreement was reached at for the repayment schedule of the said old dues by the Corporate Debtor.
6. A balance of confirmation was issued by the Corporate Debtor on 31.03.2016 and thereafter a confirmation of dues was issued by the Corporate Debtor on 01.08.2017. Subsequently, demand notices under section 8 of the Code was issued by the Operational Creditor on 20.11.2020, and 25.11.2020 and the said notices were successfully delivered to the Corporate Debtor.
7. In the reply- affidavit, the Corporate Debtor claimed that the instant petition is not maintainable under section 4 of the Code. From 24.03.2020, the threshold limit to institute CIRP proceedings has been increased from ₹1 lakh to ₹ 1 Crore. The instant petition has

been filed after 24.03.2020 and in the instant petition, the principal amount in default is ₹45,33,363/-. According to the Corporate Debtor, the Operational Creditor has used the interest component being ₹68,23,688/- to make the total debt due cross the threshold of ₹1 Crore. Hence the instant petition is not maintainable. The Corporate Debtor has relied on the decision taken by Learned National Company Law Tribunal (NCLT), New Delhi in the matter of **CBRE South Asia Private Limited vs. M/S United Concepts and Solutions Private Limited** [CP(IB)- 797(ND)2021] to establish its case.

8. Further, the Corporate Debtor has claimed that the instant petition is barred by limitation and that the demand notices under section 8 of the Code were not delivered to it. The Corporate Debtor has claimed that no email regarding the same was delivered to it and the postal receipts of the physical notices indicate that the said notices were returned to GPO Kolkata.

9. We have heard the Ld. Counsel on behalf of the Operational Creditor and the Ld. Counsel on behalf of the Corporate Debtor and perused through the record.

10. On perusal of record, it is clear that the pecuniary threshold of ₹1Crore has been achieved by the Operational Creditor by clubbing together the principal sum of ₹45,33,363/- and the interest of ₹68,23,688/-. In the matter of **CBRE South Asia Private Limited vs. M/S United Concepts and Solutions Private Limited** [CP(IB)- 797(ND)2021], the NCLT, New Delhi has held the following:

> *"[...] it can be inferred that the 'interest' can be claimed as the financial debt, but neither there is any provision nor there is any scope to include the interest to constitute as the operational debt."*

11. Further, the Ld. Counsel for the Operational Creditor, during arguments, has taken the plea that since the date of default precedes 24.03.2020, the limit of ₹1 Crore shall not be applicable to the instant petition. In this regard, we would like to rely on the judgment of Hon'ble NCLAT in the matter of **Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd.** [Company Appeal (AT) (Ins) no. 813 of 2021], wherein it was held that-

"10. The other judgments cited by learned Counsel for Appellant broadly lay down that any statute/law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute. It is seen that notification dated 24.3.2020 (supra) makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 crore. This threshold limit will be applicable for application filed

u/s 7 or 9 on or after 24.3.3020 even if debt is of a date earlier than 24.3.2020. Since the application under section 9 which is the subject matter of this appeal was filed on 13.9.2020, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the present case."

12. Referring to the above judgments, we would like to hold that in case of Operational Debts, the interest component cannot be clubbed with the Principal Debt to arrive at the minimum pecuniary threshold of ₹1 Crore. Further, that the threshold limit of ₹1 Crore will be applicable for applications filed u/s 7 or 9 on or after 24.3.3020 even if the date of default precedes 24.3.2020.
13. Therefore, without going into further merits of the instant petition, we are of the view that since in the instant petition, the principal amount of debt is lesser than ₹1 Crore, the same is not maintainable under section 4 of the Code and is accordingly **dismissed**.
14. The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
15. Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri	**Rohit Kapoor**
Member (Technical)	**Member (Judicial)**

Signed on this, the 20th day of May, 2022

SM[LRA]