



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-IV**

IA No. 3610/MB/C-IV/2023

In

CP(IB) No.806/ MB/C-IV/2021

An application under Section 60(5) of
the Insolvency and Bankruptcy Code,
2016

Filed by

Mahesh Keswani

...Applicant

Versus

Dinesh Kumar Aggarwal

...Respondent

IN THE MATTER OF

Amit Punjabi

...Financial Creditor

Versus

GAMBS India Private Limited.

... Corporate Debtor

Order delivered on: 31.10.2023.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant

: Mr. Nausher Kohli a/w Ms. Sakshi
Dube, Advocates.

For the Respondent/Liquidator : Mr. Manish Jha, Advocate.

Mr. Dinesh Kumar Aggarwal,
Liquidator present in Person.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The present Application is filed by the Applicant seeking:
 - a) This Hon'ble Tribunal be pleased to allow this Interlocutory Application;
 - b) This Hon'ble Tribunal be pleased to exercise its powers and direct the Respondent to admit the claim of the Applicant in sum of Rs. 1,18,93,391 (Rupees One Crore Eighteen Lakhs Ninety- Three Thousand Two Hundred and Ninety- One Only);
 - c) Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to stay the effect and operation of the E- auction to the extent of distribution of the proceeds among the unsecured financial creditors;
 - d) Pass such order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present matter.

Submissions by Petitioner:

2. The Applicant is the Unsecured Financial Creditor. On 15.02.2011, the Applicant provided financial help to the Corporate Debtor for an amount of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only). It was agreed between the Applicant and Corporate Debtor that the rate of interest would be (i) Compounded interest at the rate of 17% till 16 July 2016; (ii) Simple interest at the rate of 17% from 17 July 2016 until 31 December 2021 and (iii) Simple interest at the rate of 17% thereafter.

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- 2.1. Pursuant to the aforesaid agreement and understanding between the Applicant and the Corporate Debtor, the Corporate Debtor issued two cheques amounting to Rs. 1,06,59,687/- (Rupees One Crore Six Lakhs Fifty-Nine Thousand Six Hundred and Eighty-Seven Only) after deduction of the Tax Deducted at Source ("TDS") amount.
- 2.2. Thereafter, the Corporate Debtor was admitted in CIRP vide Order dated 07.02.2023. Accordingly, Interim Resolution Professional, Mr. Saket Shantilal Jain ("IRP"), was appointed and the CIRP was initiated against the Corporate Debtor.
- 2.3. The Applicant filed the claim vide Form-C with the interest calculation sheet and other documents supporting his claim with the erstwhile IRP. In the said claim form, the Applicant claimed a Principle Amount to the tune of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only) and Interest Amount, as agreed, to the tune of Rs. 93,93,291/- (Rupees Ninety- Three Lakhs Ninety-Three Thousand Two Hundred and Ninety- One Only) totalling to Rs. 1,18,93,291/- (Rupees One Crore Eighteen Lakhs Ninety- Three Thousand Two Hundred Ninety-One Only) ("Claim"). The erstwhile IRP accepted the Claim in its entirety without rejecting any part/amount of the Claim. The same is evident from the unsecured financial creditors' list attached to the report filed by the IRP before this Hon'ble Tribunal under Regulation 13 (2) (d) of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, acknowledging the Applicant as the unsecured financial creditor list and admitting his Claim Amount of Rs. 1,18,93,291/- (Rupees One Crore Eighteen Lakhs Ninety-Three Thousand Two Hundred and Ninety-One Only).

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- 2.4. By an Order dated 02.11.2022, this Hon'ble Tribunal allowed an Application filed by Committee of Creditors ("COC") seeking replacement of IRP and appointment of Respondent as the Resolution Professional of the Corporate Debtor.
- 2.5. The Respondent informed the Applicant that the Applicant's claim had been partially rejected to the tune of Rs. 47,62,538/- (Rupees Forty- Seven Lakhs Sixty- Two Thousand Five Hundred and Thirty-Eight Only) and only Rs. 71,30,753/- (Rupees Seventy- One Lakhs Thirty Thousand Seven Hundred and Fifty- Three Only) has been admitted. The Applicant addressed an email dated 13.12.2022 to the Respondent explaining all the transactions carried out.
- 2.6. On 15.12.2022 the Respondent addressed an email informing the Applicant that the admitted Claim was improper and required re-verification. The Respondent stated that the Claim was partially admitted on the basis of the letter dated 1.12.2021 addressed by the Corporate Debtor that the interest charged is 17% simple interest.
- 2.7. The Applicant immediately resubmitted the claim Form C to the Respondent vide email dated 16.12.2022 along with the aforesaid letter of 1.12.2021 and updated about all the calculations agreed and accepted by the Corporate Debtor along with all the documents furnished to the IRP while submitting Form C. The Respondent once again rejected the claim of the Applicant to the tune Rs.47,62,538/- and accepted the claim for Rs. 71,30,753/-.
- 2.8. The Applicant had filed an IA seeking directions for admitting the original claim of the applicant to the tune of Rs. 1,18,93,291/- which was previously admitted by the IRP. He also submitted that during pendency of this IA



respondent addressed an email to the petitioner on 06.03.2023 wherein the Respondent admitted the entire claim of Applicant.

2.9. This Tribunal on 21.03.2023 initiated liquidation of the Corporate Debtor and the Respondent was appointed as the Liquidator. Further, the Tribunal dismissed the said IA as Infructuous since liquidation has been initiated against the Corporate Debtor.

2.10. It is further submitted that the applicant submitted claim in form D for an amount of Rs.1,43,19,524/-. The Respondent informed the applicant that only part claim of the applicant to the tune of Rs. 76,70,753/- has been admitted.

2.11. On 16.5.2023, the Applicant addressed the legal notice to the liquidator stating that the Corporate Debtor has acknowledged its liability twice by issuing cheques.

Submissions advanced by the Respondent vide Affidavit in reply dated 09.10.2023:

3. The Corporate Debtor states that the Applicant had submitted the claim in the following manner:

a. Principal Amount - Rs. 25,00,000/- Interest Amount Rs. 93,93,291/- (Compounding Interest @17% up to 16.07.2016 and thereafter (@17% simple interest) Total Amount of Claim- Rs. 1,18,93,291/-

It is submitted that, out of the above Interest amount of Rs. 93,93,291/-, the respondent has admitted the interest amount of Rs. 46,30,753/- considering the simple interest @ 17% per annum from 15/02/2011 till 07/01/2022.

3.1. It is submitted that the Applicant is aggrieved for not admitting the balance interest amount of Rs. 47,62,538/-. The applicant states that the following

terms were agreed between him and the Corporate Debtor:

- i. The interest shall be charged as per the compounding rate of 17% from 15/02/2011 till 16/07/2016.
- ii. The interest shall be charged as per simple interest 17% per annum from 17/07/2016. It is submitted that, the Applicant has failed to produce any such document/ proof which shows that the above interest terms were agreed between the Applicant and the Corporate Debtor.

3.2. It is submitted that the Applicant has also not submitted any communication proof exchanged between the Applicant and the Corporate Debtor, which dictates the terms agreed between the parties for the loan provided to the Corporate Debtor.

3.3. It is submitted that the letter dated 1st December 2021, issued by the Corporate Debtor, for issuing new cheques replacing the old cheques, clearly mentions that the simple interest of 17% is to be paid. The said letter dated 1st December 2021, thus clearly evidences that the 17% simple interest rate was agreed between the Corporate Debtor and Applicant.

Findings and Directions:

4. We have perused records and heard the submissions made by the parties.
5. This bench observes that there is no written agreement between the Petitioner and the Corporate Debtor regarding the interest to be paid. The petitioner is relying on cheques issued by the Corporate Debtor towards repayment through letter dated 01.12.2021 which states that “*Simple Interest @ 17% p.a*”.



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This is the only document placed on record by the petitioner in support of its claim.

6. This bench is hence of the considered view that the Respondent (Liquidator) has not erred in rejecting the partial claim of the Applicant.
7. Accordingly, **IA No. 3610 of 2023 in CP(IB) No. 806 of 2018** is dismissed as **rejected**.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
31.10.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)