

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I, KOLKATA**

C.P.(IB)/47(KB)2022

An application under section 9 of the Insolvency & Bankruptcy Code, 2016.

**In the matter of :
WPIL Limited**

....Operational Creditor

Versus

Hiranmaye Energy Limited
(Formerly India Power Corporation (Haldia) Ltd.

....Corporate Debtor

Order reserved on: 05/07/2022

Order pronounced on: 27/07/2022

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SHRI ROHIT KAPOOR, MEMBER (JUDICIAL)

SHRI BALRAJ JOSHI, MEMBER (TECHNICAL)

Counsel / Authorized Representative appeared through video conference:

For the Operational Creditor

Mr. Arindam Guha.

For the Corporate Debtor

Mr. Yubraj Bhattacharya

Preliminary Order

1. The Operational Creditor and the Corporate debtor entered into several contracts relating to the Design, Engineering, Supply erection and for providing related services in connection with setting up of the 3x150 MW Thermal Power project at Haldia.

2. This matter came up for hearing on 5.07.22. At the outset, the corporate debtor took a prima facie stand on the question of maintainability of the present petition being barred under the provisions of the IBC 2016, since the principal amount claimed in the said application was Rs. 90.58,667/- which was below the threshold limit of Rs. 1.0 Crore as provided for in Section 4 of the Code. He also stated that there being no provision for payment of interest in the contract between the parties, the application needs to be dismissed in limine.
3. There were other defences mentioned to have been taken in the petition like limitation and pre-existing disputes etc. but the limited issue which is the subject matter of this order is the Threshold limit of Rs 1.0 Cr as specified in Section 4 of the Code and whether this limit includes the interest component or the Principal amount on its own has to be taken on standalone basis.
4. The Operational Creditor has brought to our notice the Letter of award dated April 2, 2014 for the subject works (pg 41 Annexure G) of the petition. In the payment terms under 3(a), the last bullet point inter-alia states that “This payment should be released within maximum 120 days from the date of the completion of the supply”. This stipulation is common to various contract signed between the parties.
5. The issue of inclusion of the interest while calculating the threshold limit stipulated in the code, have been addressed by various NCLT benches and one of the views that takes shape, to our mind, is the view that unless agreed to in the contract, there was no way that the amount of accruing

interest be added to the principal amount for calculating the total claim for establishing the maintainability of the petitions under Section 4.

6. In this regard the Operational Creditor has invited our attention to various invoices sent to the Corporate debtor placed as Annexure “P” (pg. 85 onwards), where in it has been inter-alia clearly mentioned that “...*the Interest @21% shall be charged on all the invoices not paid on due date.*” A computation sheet of outstanding claim along with interest has been attached with the Section -8 notice at Page 142 and marked as “Annexure W”.
7. The issue for consideration here is whether this stipulation on the invoices that the interest shall be charged can be taken to be an agreed or contracted rate or not , particularly when the Corporate Debtor has made payments to some of these invoices and has never raised any objection to this stipulation on the invoices. The learned counsel for the Operational creditor submits that this stipulation shall be read with the terms of the payment in the contract which specify a time limit of 120 days on the invoices and the consequential remedy for not following the contractual stipulation is that the interest has to be paid and the very fact that they have made to some of the invoices within the stipulated period and without raising any demur on the interest stipulation, they have acquiesced to the stipulation .
8. In the meantime, the Hon’ble NCLAT in the matter of Company Appeal (AT) (Ins) No. 690 of 2022 dated 15.7.22 in a speaking order has held that the interest stipulated in the invoices shall be added to the Principal amount in order to work out the total claim for the purposes of Section

4 and as such the matter has been put to rest for the time being. In light of the above judgment, we see no reason for not entertaining this petition on the issue of maintainability in so far as the matter of inclusion of the interest in the outstanding principal amount for comparing with the threshold value is concerned.

9. Accordingly list this matter for further consideration on 22.8.2022.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 27th day of July, 2022