



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

CP (IB) No.1249/MB-IV/2022

Under Section 9 of the I&B Code, 2016

In the matter of:

TCL Cables Private Limited

[CIN: U31904GJ2019PTC110468]

...Operational Creditor/Applicant

V/s

**Shapoorji Pallonji & Company Private
Limited**

[CIN: U45200MH1943PTC003812]

...Corporate Debtor/Respondent

Order pronounced on : 30.08.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Shyam Kapadia a/w Mr. Kunal
Vaishnav, Advocate

For the Respondent(s) : Mr. Amir Arsiwala a/w Ms. Gayati
Mohite & Ms. Nupur Shah,
Advocates



ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 1249/NCLT/MB/C-IV/2022 filed by TCL Cables Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the matter of Shapoorji Pallonji & Company Private, Corporate Debtor.

1.1 The Application is filed by Mr. Mayank Gupta, authorized by the Operational Creditor, claiming amount in default amounting to Rs.13,73,75,445/- (Rupees Thirteen Crore, Seventy-Three Lakh, Seventy-Five, Four Hundred and Forty-Five only), which includes Principal of Rs.11,59,68,463/- and interest of Rs. 2,14,06,976/- as on 13.08.2022.

1.2 The Applicant has given wise due dates in Part-IV which is reproduced as below. This table gives the date of default as claimed by the Applicant -

Invoice No.	Invoice Date	Due Date	Amount
CI0096100457	23.07.2021	23.08.2021	66,42,390
CI0096100470	24.07.2021	24.08.2021	64,06,210
CI0096100492	27.07.2021	31.08.2021	67,15,183
CI0096100508	29.07.2021	02.09.2021	54,57,663
CI0096100509	29.07.2021	02.09.2021	45,80,583
CI0096100511	30.07.2021	03.09.2021	29,98,933



CI0096100512	30.07.2021	03.09.2021	31,34,325
CI0096100579	09.08.2021	13.09.2021	35,76,615
CI0096100580	09.08.2021	13.09.2021	36,71,683
CI0096100581	09.08.2021	13.09.2021	43,49,925
CI0096100582	09.08.2021	13.09.2021	43,18,280
CI0096100647	19.08.2021	23.09.2021	36,59,988
CI0096100651	20.08.2021	24.09.2021	31,79,913
CI0096100652	20.08.2021	24.09.2021	9,59,530
CI0096100653	20.08.2021	24.09.2021	28,87,462
CI0096100654	20.08.2021	24.09.2021	38,22,474
CI0096100986	21.10.2021	25.11.2021	25,79,930
CI0096100991	21.10.2021	25.11.2021	25,79,930
CI0096100992	21.10.2021	25.11.2021	77,17,345
CI0096100994	21.10.2021	25.11.2021	46,52,371
CI0096100995	21.10.2021	25.11.2021	66,45,559
CI0096100996	21.10.2021	25.11.2021	46,33,001
CI0096100998	21.10.2021	25.11.2021	58,09,862
CI00961101026	25.10.2021	29.11.2021	77,55,255
CI00961101044	26.10.2021	30.11.2021	77,33,592

2. The case of the Operational Creditor is as under:

2.1 The TCL Cables Private Limited (Applicant) is a Company inter alia engaged in the business of manufacturing Power Cables. The Shapoorji Pallonji & Company Private Limited (Corporate Debtor) is a private limited company and has its presence in various businesses ranging from construction, real estate, infrastructure and financial services, etc.



- 2.2 In the course of its business, Corporate Debtor had by way of Purchase Order No.4200508145 dated 31/05/2021 placed order through its Branch Office namely Water Division upon Corporate Debtor for supply of various Cables. The Applicant has duly supplied two lots of cables to Corporate Debtor as per their requirements and specifications from July 2021 till October 2021. Since Corporate Debtor did not make payment of the first two lots despite giving assurances, the question of Applicant supplying the third lot did not arise. In fact, the Applicant had supplied even the second lot of cables only because of the assurance given by the Corporate Debtor to make previous payments. Besides, the Corporate Debtor had never demanded supply of the third lot of cables. TCL duly issued Invoices for the supply of cables to Corporate Debtor. The invoices issued by Applicant and accepted by Corporate Debtor provide that an "interest @ 18% per annum would be charged on all overdue payments." Accordingly, the interest on delayed payment is calculated. The Corporate Debtor has failed to make payments towards the invoices issued by Applicant, despite acknowledging all the invoices sent to it as also receiving the said cables duly supplied by Applicant as per the aforesaid Purchase Order. The Corporate Debtor has never raised any objections or dispute regarding quality, quantity and/or material supplied by Applicant or the outstanding amount under the invoices as issued by Applicant.
- 2.3 Thereafter, the Applicant has sent several email communications as reminders to the Corporate Debtor requesting payment for the outstanding amount towards the invoices. The Corporate Debtor



has while acknowledging the debt has also assured vide its email dated 16/02/2022 as well as several verbal assurances that it shall be making payment in a phased manner starting from 18/02/2022 and shall pay the entire amount, as stated above by 31/05/2022. Despite sending repeated reminders and several emails and promises given by the Corporate Debtor, an amount of only Rs.50,00,000/- has been received only on 24/02/2022 and thereafter no payment was made by Corporate Debtor.

- 2.4 The Applicant therefore issued notice dated 16/8/2022 calling upon the Corporate Debtor to clear the outstanding dues of Rs. 11,59,68,469 plus interest of Rs. 2,14,06,976. (as on 13.08.2022) totalling to Rs. 13,73,75,445. within 10 days from the receipt of the said notice. However, instead of making payment of the outstanding amount a reply was sent dated 24/8/2022 raising merely a moonshine defence. Pertinently, in the said reply, the Corporate Debtor has not denied the principal outstanding amount payable by them to the Applicant while raising false and vexatious issues regarding interest for which the Applicant is rightfully entitled to particularly in light of the stipulation for the same in all the invoices issued to the Corporate Debtor for the supply of cables and when the invoices and the goods mentioned therein have been undisputedly accepted by the Corporate Debtor without demur and without any objection whatsoever. No objection was raised by the Corporate Debtor with respect to the clauses in the invoices including the clause about the rate of such interest on delayed payments before accepting such supplies nor the quality of the goods supplied to them.



3. The Corporate Debtor filed reply dated 11.07.2023 stating that the Petition is not maintainable and it deserves to be dismissed with costs at this threshold for following reasons.
- 3.1 The present Petition is not maintainable as the demand of Rs.13,73,75,445.64/- (Rupees Thirteen Crores Seventy Three Lakh Seventy Five Thousand Four Hundred Forty Five and Sixty Four paise only) ("alleged Operational Debt") is not due and payable by the Corporate Debtor.
- 3.2 The present Petition is not maintainable before this Hon'ble Tribunal as an amount i.e. Rs.11,59,68,469/- (Rupees Eleven Crore Fifty Nine Lakh Sixty Eight thousand Four Hundred and Sixty Nine only) towards full and final payment is paid by the Corporate Debtor on 13.03.2023 and 31.05.2023.
- 3.3 The Operational Creditor has claimed an amount of Rs. 2,14,06,976.64/- (Rupees Two Crore Fourteen Lakh Six Thousand Nine Hundred Seventy Six and Sixty Four Paise only) towards interest 18% p.a. However, no interest can be claimed as a part of the debt if the contract does not provide for it. In the present case, no clause of the Purchase Order bearing no. 4200508145 dated 31.05.2021 ("Purchase Order") and the amended Purchase Order bearing no. 4200508145 dated 22.07.2021 ("Amended Purchase Order") has provided for interest. Therefore, no interest could have been sought for as an 'operational debt' as the same is not due or payable. Hence, the present Petition is not maintainable and ought to be dismissed in limine.
- 3.4 The Corporate Debtor has raised dispute with respect to non-delivery of goods more specifically the third-lot under the said



Purchase Order and Amended Purchase Order. Since there exists a dispute between the parties before issuance of Demand Notice, the present Petition is not maintainable and is liable to be dismissed on this ground as well. The aforementioned pre-existing dispute was raised in the Reply to the Form 3- Demand Notice which was issued within the stipulated period of ten (10) days. The alleged Operational Debt claimed by the Operational Creditor is premature as the present petition is filed before reconciliation of the invoices and account statements.

- 3.5 The Operational Creditor is misusing the scheme of the said Code and the present Petition has not been filed for an intent that is not envisaged under IBC. It is submitted that, the present Petition has been filed for the sole purpose of recovery rather than resolution. It is a settled principal of law that recourse under IBC cannot be for recovery and has to necessarily be for resolution of an insolvent company.
- 3.6 It is submitted that the Corporate Debtor has paid an amount of Rs.11,59,68,469/- (Rupees Eleven Crore Fifty Nine Lakh Sixty Eight thousand Four Hundred and Sixty Nine only), since filing of the present petition;
- i. Rs. 4,00,00,000/- (Rupees Four Crore only) vide Transaction No. RTGS/IBKLR92023031300036371 dated 13.03.2023;



- ii. Rs. 4,00,00,000/- (Rupees Four Crore only) vide Transaction No. RTGS/IBKLR92023031300039154 dated 13.03.2023;
- iii. Rs. 3,58,70,951.49/- (Rupees Three Crore Fifty Eight Lakh Seventy Thousand Nine Hundred Fifty One and Forty Nine paisa only) vide Transaction RTGS/IBKLR92023053100059057 dated 31.05.2023;
- iv. Rs. 97,516/- (Rupees Ninety Seven Thousand Five Hundred and Sixteen only) is deducted on account of TDS ("Tax Deducted at Source) with Certificate No. WUFBZVA, dated 02-Jun-2022.

3.7 Upon receipt of the aforementioned amounts, the Operational Creditor vide an Email dated 13.06.2023 acknowledged the receipt of an amount of Rs.11,59,68,469/- (Rupees Eleven Crore Fifty Nine Lakh Sixty Eight thousand Four Hundred and Sixty Nine only) and demanded payment of interest. In response to the said Email, the Corporate Debtor has categorially denied payment of interest on the ground that the aforementioned payment was made towards full and final payment after reconciliation of the account and that there is no agreement for payment of interest. The Operational Creditor vide its Email dated 30.06.2023 once again unilaterally demanded payment of interest.

3.8 It is submitted that 'interest' cannot be awarded merely on the basis of a term in a bill or invoice; unless the creditor proves that such provision is based on a contract or agreement. Either an agreement



to pay interest or a specific admission or promise to pay interest or an order or decree granting interest by a court or tribunal empowered to award interest, is a condition precedent to hold that interest is debt due for the purpose of initiating corporate insolvency resolution process. In the present case, the Operational Creditor has claimed "interest on the basis of the invoices. Such a claim of interest is unilateral neither the Purchase Order nor the Amended Purchase Order stipulates an interest clause. Further, it is pertinent to note here that the Corporate Debtor has never agreed to pay any interest.

- 3.9 Due to reasons attributable to the Operational Creditor, such as failure to deliver good within stipulated time, the project was considerably delayed. It is pertinent to note here that the works are not completed and is still pending. The Operational Creditor has failed to supply/deliver goods in respect of the third lot. The Operational Creditor has not denied the same. Therefore, in view of the non-delivery of goods, there exists a pre-existing dispute. it is pertinent to mention here that the aforementioned pre-existing dispute was raised in the Reply dated 24.08.2022 to the Form 3-Demand Notice. The said Reply dated 24.08.2022 was issued within the stipulated period of ten (10) days.
4. This Bench heard the Counsel and perused the material on record.
 - 4.1 This Bench finds that there is no dispute that the principal amount of debt claimed in the present petition has been paid to the Operational Creditor since filing of present petition, and it is duly acknowledged by it also.



- 4.2 The Operational Creditor is claiming the amount of interest, which remains after payment of Principal outstanding amount on the basis of condition in the invoices issued by the Operational Creditor, however, it is not in dispute that there is no such stipulation in the Purchase Order accepted and acknowledged by the Operational Creditor prior to supply of goods thereunder. The Counsel for Operational Creditor also raised a plea that it had appropriated the amounts paid by the Corporate Debtor towards interest due on each invoice along with principal due thereunder. However, the Operational Creditor has not provided any evidence to suggest that. Nonetheless, the manner of appropriation of amounts paid by the Corporate Debtor is to be decided on the facts of the case, and it is the case of the Corporate Debtor that such payment was made with express intent towards the principal amount due under each invoice. This Bench finds that the manner of appropriation of payment made by the Corporate Debtor since filing of present petition itself is a dispute, and it can not be said that the remaining debt, which is interest on the principal, is an undisputed debt.
- 4.3 Without going into the claim that there existed dispute in relation to supply of third lot also, we are of considered view that a petition u/s 9 of the Code cannot lie merely for recovery of interest component, if the contention of the Corporate Debtor is accepted, and which appears to be more evident basis the facts produced before us. The Hon'ble NCLAT, in the case of ***Krishna Enterprises Vs. Gammon India Ltd. 2018 SCC Online NCLAT***, held at Para 5 that “*In the present appeals, as we find that the*



principal amount has already been paid and as per agreement no interest was payable, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. If for delayed payment Appellant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer.”

- 4.4 Further, the Hon’ble NCLAT, in the case of ***S.S. Polymers Vs. Kanadia Technoplast Ltd. Company Appeal (AT) (Insolvency) No. 1227 of 2019, dated 13.11.2019*** held at Para 5 that “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 realization 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 realize 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”.
- 4.5 In the case of ***Rohit Motawat Vs. Madhu Sharma Proprietor Hind Chem Corporation & Anr. (2023) ibclaw.in 128 NCLAT***, it was again held “The question which has been raised by the Appellant, is hereby answered in favour of the Appellant in view of the decision taken by this Court in case of ‘S.S.Polymers’ (Supra), ‘Permali Wallace Pvt. Ltd.’ (Supra) as well as the decision of the ‘Hon’ble Karnataka High Court’ in the case of ‘Jyothi Limited’ (Supra). Before parting, we are constrained to



observe that the Adjudicating Authority has erred in not looking into the facts that the principal amount has entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable as the spirit of the legislation of the Code is for 'resolution of debt' and not for 'recovery'.

5. In view of the aforesaid discussion and findings, this Bench is of considered view that the present Petition deserve to be dismissed as not maintainable.
6. Accordingly, C.P.(IB) 1249/2022 is **dismissed**.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)