

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 20.09.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.28/9/AMR/2021		9 of IBC	SOI Commodities Import & Export Fze Vs Ranar Agrochem Ltd

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

CP(IB) No.28/9/AMR/2021 is dismissed, vide separate orders.

SD/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

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CP (IB) No. 28/9/AMR/2021

**In the matter of a Petition 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. RANAR AGROCHEM LIMITED**

Between:

SoI Commodities Import & Export FZE
(Formerly Known as Fargo International Trading FZE)
P. O. Box 10055, Ras Al Khaimah,
Free Trade Zone (RAK), UAE.

... Operational Creditor

AND

M/s. Ranar Agrochem Limited,
E-Bonagi Village, IDA Parawada Mandal,
KIES Visakhapatnam,
Andhra Pradesh - 531021.

... Corporate Debtor

Date of Order: 20.09.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor : Mr. K.K.Rao, Advocate.
For Corporate Debtor : Mr.T.V.L.Narasimha Rao, Advocate.

ORDER

1. This Company Petition filed by the Operational Creditor (in short OC) i.e., SoI Commodities Import & Export FZE seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (in short CD) i.e., M/s. Ranar Agrochem Limited on the ground that the Corporate Debtor has defaulted in discharging the debt due to the Operational Creditor.
2. The facts of the case briefly are as follows:

The Operational Creditor is engaged in the business of sale and supply of Bright Yellow Crude Sulphur. In January, 2018 the Corporate Debtor approached the Operational Creditor for purchasing Bright Yellow Crude Sulphur in bulk and they entered into a contract on 19.01.2018. The discharge port for the above said contract was Vizag Port India. The Operational Creditor has supplied the product as agreed. It dispatched 2,200 MT Bright Yellow Crude Sulphur on 28.02.2018 vide a bill of lading No.06. The terms of payment were agreed between them which has to be within three days from the receipt of the shipping documents. But the said payment was not made as agreed, inspite of reminders. A demand notice was issued on 16.08.2019 calling upon the Corporate Debtor and also on 20.08.2019. No reply notice was issued. Hence, this Petition seeking to initiate CIRP against the Corporate Debtor.

3. The Corporate Debtor filed counter, contending that the amount of AED 6,70,692 is an amount due to M/s.Fagro International Trading FZE and not to the Operational Creditor. Regarding interest it is contended that the contract dated 21.09.2016 does not provide for any interest on deferred or delayed payment by the Corporate Debtor.
4. The amount of EURO 169273.69 is an amount due to M/s.Fagro International Trading FZE and not to the Operational Creditor and the invoice does not provide for any interest on deferred or delayed payment. The contract was issued in the name of M/s.Fagro International Trading Limited and not in the name of M/s.Fagro International Trading Limited (UAQ FZE Branch). The said anomaly has not been rectified by the supplier, despite telephonic request by the Corporate Debtor.
5. The Operational Creditor did not file Resolution of the Board of Directors authorizing them to move this application. Ex. A-17 reveals that Mr.Mohd Basheer has been authorized to participate only in the proceedings of the CIRP which event would happen only after admission of the Company Petition. The notice which was allegedly issued on 16.08.2019 is issued by the Operational Creditor and not by M/s.Fagro International Trading Limited. The notice dated 28.02.2018 was never issued and served on the Corporate Debtor.

6. The Operational Creditor did not issue any notice in Form 4 under Rule 5(1)(b) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. In fact M/s.Fagro International Trading Limited passed a legal notice on 21.08.2019 with respect to its dues of USD 312400 payable by the Corporate Debtor, which was not accompanied by Form 4 of the Rules. Similarly separate legal notice on 21.08.2019, with regard to the dues of AED 670692 payable to M/s.Fagro International Trading FZE was received and it was not accompanied by Form 4.
7. The Operational Creditor suppressed the issuance of the said two notices. This is evident from the fact that the Operational Creditor replied upon the two replies dated 03.09.2019, while the said replies were for the two separate notices dates 21.08.2019 and not to the notices dated 16.08.2019. The Operational Creditor is not entitled to club in one Company Petition, two different independent and varying causes of action. The Respondent is liable to pay to M/s.Fagro International Trading FZE and not to the Operational Creditor an amount of AED 670692 (approximately Rs.1.24 Crores) under invoice dated 19.09.2016. Similarly it is liable to pay M/s.Fagro International Trading Limited and not to the Operational Creditor an amount of EURO 152568.89 (approximately Rs.2.18 crores) under invoice dated 28.02.2018.
8. The Company Petition filed by the Operational Creditor claims without any basis that M/s.Fagro International Trading FZE is now

known as M/s.SoI Commodities Imports & Exports FZE and it is due to get from the Corporate Debtor the amount of AED 670692, whereas, it is silent about the status of M/s.Fagro International Trading Limited for the claim of EURO 169273.69. The Operational Creditor did file any document evidencing that the erstwhile name of M/s.SoI Commodities Imports & Exports FZE is M/s.Fagro International Trading FZE. Hence, the present Petition is not maintainable and is liable to be dismissed.

9. Rejoinder is filed by the Operational Creditor stating that the name of M/s.Fagro International Trading FZE was changed to M/s.SoI Commodities Imports & Exports FZE vide addendum to Memorandum of Association (MoA) dated 13.05.2019 vide a certificate dated 21.05.2019. With regard to the Authorized Signatory, the Corporate Debtor cannot raise these clumsy objections and that Mohammed Basheer is the Authorized Signatory. In terms of Sub-Rule (1) a demand notice in Form 3 or a copy of invoice attached with the notice in Form 4 has to be sent. Either Form 3 or Form 4 is required and not both. The Corporate Debtor has admitted the liability of the amount stating that it is payable to M/s.Fagro International Trading FZE. All the other contentions raised in the counter are denied in the rejoinder.
10. Written submissions are filed by both sides. Heard the arguments and perused the written submissions. It can be noted before going into the discussion of the matter that admittedly the principal amount

due is paid by the Corporate Debtor and was received by the Operational Creditor. What remains before the Tribunal is only the claim for the interest.

11. The Counsel for the Corporate Debtor submits that there is no provision for interest made on the deferred and delayed payments and in fact there is no default and there was only a deferment of the payment with the understanding that all new purchases from the Operational Creditor or its group companies were against payment till the above amounts were paid after overcoming the financial recession faced by the Corporate Debtor for few years in the past.

12. The Corporate Debtor has remitted the entire amount of AED 670692 and EURO 255204.11 due to M/s.Fagro International Trading Limited. Though the Counsel raises a plea that the Company Petition is not maintainable as the Operational Creditor clubbed the claim amount of M/s.Fagro International Trading Limited with the claim amount of the Operational Creditor, the fact remains that he has discharged the principal amount that is due to both the Companies. As regards the claim for interest the Counsel for the Operational Creditor does not deny the fact that there is no agreement for interest between the parties. However, he only seeks this Tribunal to grant interest considering, that there is a delayed payment and that for the delayed payments interest can be awarded on the basis of the Provisions of the Interest Act.

13. The Counsel for the Operational Creditor however submits that this Tribunal has in *CP (IB) No.49/9/AMR/2020 between Macawber Beekay Private Limited Vs. M/s. BGR Energy Systems Private Limited* held that a claim for interest alone cannot be permitted to continue before the NCLT. In the above cited judgment this Tribunal has framed a point “Whether the application under Section 9 IBC can be continued for mere claim of interest”. By referring to the definitions of the Operational and Financial Debts the Tribunal noticed that there is a clear difference between a financial debt and an operational debt. While the financial debt includes interest, the Operational Debt does not include interest. The question of awarding interest under the Interest Act or other enactments would arise only when there is an operational debt. When admittedly there is no operational debt, whether the claim petition filed for both the operational Debt and interest can be allowed to be continued inspite of the Operational Debt being discharged by the Corporate Debtor was discussed.

14. The judgment of the NCLT, New Delhi in *SS Polymers Vs. Kanodia Technoplast Limited in Company Petition No. IB-121/ND/2019* was relied upon, wherein it was held that not every interest can be treated as a debt. If in terms of the agreement, interest is payable to the Operational or Financial Creditor then the debt will include interest, otherwise the principal amount is to be treated as a debt which is the liability in respect of the claim that can be made from

the Corporate Debtor. The judgment also discussed about the prayer of the Operational Creditor that Section 3 of the Interest Act, 1978 can be invoked for allowing a claim for interest.

15. The judgment of the Hon'ble Supreme Court in ***Consolidated Construction Consortium Limited Vs. Hitro Energy Solutions Private Limited in MANU/SC/0152/2022***, wherein the Supreme Court relied on the judgments in ***Mobilox and Swiss Ribbons*** and held that in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may if it thinks fit allow interest to the person entitled to the debt or damages or to the person making such claim as the case may be, at a rate not exceeding the current rate of interest for the whole part of the following period.
16. The contention of the Counsel therein that the proceedings under IBC are not recovery proceedings therefore, application of Interest Act does not arise was also met with by taking help of the judgment of the NCLAT in ***Ranjeet Singh and others Vs. Karan Motors private Limited and others in MANU/NL/0346/2021***, wherein it was held that "if on delayed payment the Applicant claims interest it will be open to it to move a court of competent jurisdiction for recovery of interest, but initiation of CIRP is not the answer". It was also held that the law is well settled that unless there is a specific covenant as to payment of interest in the agreement, interest cannot be claimed for an operational debt. If in terms of any agreement interest is

payable to the Operational or Financial Creditor then debt includes interest and otherwise principal amount is to be treated as debt which is a liability in respect of the claim which can be made from the Corporate Debtor.

17. The judgment of the NCLAT in *Krishna Enterprises and others Vs. Gammon India Limited MANU/NL/0359/2018* was also relied upon, wherein it was held that when the principal amount is already paid and as per the agreement no interest was payable, the applications under Section 9, on the basis of claims for entitlement of interest are not maintainable. It was also held that if for delayed payment the appellant claims interest, it will be open for it to move a court of competent jurisdiction, but initiation of CIRP is not the answer. A judgment of the NCLT, Hyderabad Bench between *Vattam Steels Vs. Lahari Infra Projects (India) Private Limited* was relied upon wherein it was held that the application under I&B Code is not a tool for recovery and with regard to the claim of the Operational Creditor to interest which is not even quantified, the Petitioner should seek its remedy before a competent court of law. A judgment which was relied upon by the Operational Creditor therein in *P.K.Vaduvammal Vs. Jaydev Constructions Private Limited* rendered by NCLT, the Corporate Debtor therein submits that the said judgment was referred to the 3rd member and the 3rd member held that “ on perusal of the record and hearing of the Counsel for the Operational Creditor, it is seen that the findings recorded by the

Hon'ble Judicial Member is based on the interpretation of the relevant provisions of the Sale of Goods Act and distinguished the judgment of the NCLAT stating that in the said case the issue involved was about the payment of interest only, whereas, in the present case the issue involved is for payment of principal and interest.”

18. Hence, the above judgments would apply squarely to the facts of this case. There is a clear admission that principal amount is already paid and admittedly there is no agreement with regard to the interest. The Counsel for the Operational Creditor seeks this Tribunal only to invoke the provisions of the Interest Act to grant interest. But it can be seen that the application under Section 9 of IBC is principally for taking the Corporate Debtor into the CIRP which has become an insolvent. Failure of the Corporate Debtor to discharge the debt is a pre-condition for initiation of CIRP against it. If, there is an agreement for payment of interest on the debt, the same can be considered while allowing the claim for the principal amount. But when the Corporate Debtor discharges the debt, it would be showing that it is not an insolvent. Hence, declaring the Corporate Debtor as insolvent by ordering CIRP only because of the default in paying of the interest which is not agreed upon would be against the spirit of the IBC. This was what was held in the judgment rendered by this Tribunal in CP (IB) No.49/9/AMR/2020 which holds-good in this case also. It also can be noticed that the Operational Creditor would

nevertheless have the right to claim and recover interest, if it is permitted in any other law, before the appropriate forum, as NCLT does not decide the interest amount that is due to the Operational Creditor.

19. For the above reasons, the judgments relied upon by the Counsel for the Operational Creditor that is *Devendra Kumar Jain Vs. Polar Forgings & Tools Limited – DRJ 1992 (24)*, cannot be taken help of as it only upholds the principle that interest can be prayed on the delayed payments exercising the discretion of the court, as that is not a case specific to IBC proceedings. So also the judgment in *Secretary Irrigation Department Vs. G.C.Roy– Citation 1992 1 SCC 508*. There is no disagreement with the principle that interest can be granted considering the circumstances of the case. But this Tribunal cannot grant interest which is not quantified and this Tribunal cannot quantify the interest which is not agreed upon between the parties in an application filed under Section 9 of IBC. Hence, in view of the above, this Company Petition bearing CP(IB) No.28/9/AMR/2021 is dismissed.

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu