



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 2952/IBC/MB/2019**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016 read with  
Rule 6 of the Insolvency and  
Bankruptcy (Application to  
Adjudication Authority) Rule 2016)

*In the matter of*

**TIMEX BOND INDUSTRIES PVT. LTD.**

(CIN: U27101MH2008PTC185293)

Having registered office at: Thakker  
Chambers, Kelkar's Compound,  
Tembhi Naka, Near Thane District  
Court, Thane (W) 400601

.....**Operational Creditor**

**Vs**

**M/s Deist Industries Pvt. Ltd.**

(CIN: U28112MH2008PTC178392)

1 Muktisagar, Old Nagardas X Road,  
Opp, Jain Mandir, Near Bhattaachool,  
Andheri (East), Mumbai 400069

.....**Corporate Debtor**

**Order delivered on: 10.08.2023**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)  
Hon'ble Ms. Madhu Sinha, Member (Technical)

**For the Applicant:** Mr. Samrat Thakker, Advocate

**For the Respondent:** Mr. Sahil Mahajan, Advocate

**Per: Shri H.V. Subba Rao, Member (Judicial)**

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**ORDER**

1. This Company petition is filed by *M/s Timex Bond Industries Pvt. Ltd.* (hereinafter called "Operational Creditor") seeking to



initiate Corporate Insolvency Resolution Process (CIRP) against *M/s Deist Industries Pvt. Ltd.* (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Operational Debt of Rs. 50,17,589/-/- (Rupees Five Crores Forty-Eight Lacs Sixty-Two Thousand and Fifty-Six Only).

2. The submissions of Operational Creditor are as follows:-
  - a. Pursuant to the order placed by the Corporate Debtor, the Operational Creditor i.e. *M/s Timex Bond Industries Pvt. Ltd.* Has sold, supplied and delivered the goods i.e. composite plastic metallized sheet (aluminium) worth aggregating to a sum of Rs. 50,17,589/-.
  - b. The said goods were received by the Corporate Debtor without any dispute in respect of price, quality and quantity thereof and under terms of invoices, the payment was to be made with immediate effect.
  - c. However, the corporate debtor has committed default in making the payment which has severely affected the financial credentials of the operational creditor.
  - d. Demand notice under Section 8 of this Act has been issued by the Operational Creditor to the corporate debtor demanding Rs. 50,17,589/-
  - e. Reply has been given by the corporate debtor to the demand notice issued by the operational creditor and has merely denied the liability and has refused to make any payment.
  - f. The specific case of petitioner in part-iv of the application is as follows:



- i. The total amount of Rs. 50,17,589/- (Rupees Fifty Lakhs Seventeen Thousand Five Hundred and Eighty Nine only) is due from the Corporate Debtor and further interest @12% p.a. and principal amount from 12.05.2012 till payment of realization as per the operational creditors books of accounts. However, it is an admitted fact that the Operational Creditor has received Rs. 10,00,000/- from the Corporate Debtor, which has been appropriated by the operational towards interest. As against this as per the books of accounts and the audited balance sheet of the corporate debtor, the total amount due and payable is Rs. 39,35,086/-. (It seems the Corporate Debtor has appropriated the part amount paid by them of Rs. 10,00,000/- towards the principal amount and has also appropriated the value of debit note received in favour of the Corporate Debtor amounting to Rs. 82,503/- and hence the books of Corporate Debtor show the amount payable to be Rs. 39,35,086/-.
3. The Corporate Debtor filed reply dated 11.05.2023 of Mr. Dinesh Shah, Director of corporate debtor opposing the above Company Petition. The Corporate Debtor also filed copies of the judgments passed by Metropolitan Magistrate in C.C. No.672/SS/2013 and C.C. No.673/SS/2013 dated 09.01.2019 issued in response to the demand notice and their reply notice dated 19.03.2019 issued by the Operational Creditor. The important paras of the affidavit in reply are extracted hereunder for ready reference:
  - a. The invoices attached to the Company Petition were issued somewhere in the year 2012. Further, neither



the invoices, nor any other document mentions that 12% interest will be imposed for late payment. The respondent never consented to the imposition of any charges towards interest and as such the same is invalid and illegal.

- b. The cheques issued on 04.01.2013 were given to M/s Timex Bond Industries Private Limited as security and on the date of issuance of the same, there was no outstanding payable by me. M/s Timex Bond Industries Private Limited however mala-fidely deposited the same on 07.01.2013 and caused the same to be dishonoured.
- c. On account of the above, M/s Timex Industries Private Limited issued a demand notice dated 14.01.2013 under Section 138 of the Negotiable Instruments Act, 1881 through their advocate. Subsequently, the Operational Creditor filed two complaints bearing No. 672/SS/013 and 673/SS/2013 before the learned Metropolitan Magistrate, 48<sup>th</sup> Court, Andheri, Mumbai.
- d. Vide judgments, both dated 09.01.2019, the learned Metropolitan Magistrate was pleased to dismiss both the complaints filed by the Corporate Debtor, inter-alia, holding that no subsisting debt or other liability was found to be established, which Corporate Debtor was legally bound to discharge as alleged by Corporate Debtor in the said complaints.
- e. The corporate debtor submits that having failed in the proceedings before the learned Metropolitan Magistrate, Corporate Debtor has chosen to issue the Demand Notice as an afterthought and only with



a view to illegally extort money from Corporate Debtor. Corporate Debtor once again deny the Corporate Debtor alleged claims in their entirety. In any event, the claims being made by Corporate Debtor clearly fall within a period that is barred by limitation and are therefore time-barred debts.

- f. The Corporate Debtor further submits that pertinently in view of the above, it is abundantly clear that: (i) there subsists a pre-existing dispute regarding the alleged dues to corporate debtor and same stands unresolved and subsists as on date of the Company Petition; and (ii) the alleged claim is a time barred debt being raised beyond the period of limitation.
- g. The law is clear that, in case of pre-existing dispute in respect of a claim by an Operational Creditor, a petition for initiation of corporate insolvency resolution process of the corporate debtor will not be entertained by the concerned National Company Law Tribunal. In the facts of the instant case, there is a pre-existing dispute with regard the alleged claim claims due to your client. Further in accordance with Section 238A of the code, the Limitation Act, 1963 applies to all proceedings before the adjudicating authority and hence a petition for initiation of corporate insolvency resolution process of a corporate debtor is not maintainable if it pertains to a time-barred debt.
- h. The Corporate Debtor further submits that the present application has been filed by Operational Creditor abusing the due process of law. The same is



only filed with ulterior motive of arm twisting the Corporate Debtor and pressurizing it to succumb to illegal demands. There is clear existence of dispute and malafides on the operational creditor. Therefore, prayed for dismissal of the petition.

### **FINDING**

1. Heard Mr. Samrat Thakker, counsel appearing for the Operational Creditor and Mr. Sahil Mahajan, counsel appearing for the Corporate Debtor and perused the material available on record.
2. In the light of the rival contentions of the both parties through their pleadings, the issues that needs to be decided in the above Company Petition are:
  - a. *Whether the above company petition is barred by limitation?*
  - b. *Whether there is existence of any pre-existing disputes between the parties?*
3. Let us examine the first issue of limitation. It is the contention of the Corporate Debtor that the subject matter of invoices were issued on 12.04.2012, 23.04.2012, 26.04.2012, 08.06.2012, 08.06.2012, 12.06.2012 and debit note dated 31.12.2012 respectively and the company petition being filed on 06.08.2019 is barred by limitation. Objecting the above contention, the operational creditor submits that they have annexed the balance sheets of the Corporate Debtor for the years March 2013, March, 2015, March, 2016 and March, 2017 respectively in which an amount of Rs. 39,35,086/- is shown as payable to the Operational Creditor under the head "Trade Payables" and therefore the claim of the Operational Creditor to an extent of Rs. 39,35,086/- is not barred by limitation. Therefore, the contention of the Corporate Debtor



with regard to the plea of limitation is not legally sustainable and is liable to be rejected.

4. The next issue is with regard to the pre-existing dispute. In order to decide the above issue, it is important to mention here the list of certain dates and events that have taken place before filing the above Company Petition. As discussed above, the subject matter of invoices as well as the debit notes pertains to April, June and December, 2012 respectively. The Operational Creditor filed two cheque bounce cases bearing C.C. No. 672/SS/2013 and C.C. No. 673/SS/2013 on 28.02.2013 on the file of Metropolitan Magistrate, 48th Court, Andheri, Mumbai on the basis of 4 cheques issued by Corporate Debtor. C.C. No. 672/SS/2013 is filed against the Cheques bearing Nos. 562578 & 562579 dated 04.01.2013 amounting to Rs. 12,45,238/- & Rs. 12,43,584/- drawn on the State Bank of India, Andheri East branch.
5. Similarly, C.C. No. 673/SS/2013 is filed against the Cheques bearing nos. 000476 & 000478/- dated 04.01.2013 amounting to Rs. 11,02,304/- & Rs. 12,74,852/- drawn on Kotak Mahindra Bank Ltd., Kandivali Branch. Both the above NI Act cases were filed in respect of invoices bearing no. 000041 and 000085. The learned Metropolitan Magistrate vide his order dated 09.01.2019 dismissed both the complaints on merits with the following observations at Para No. 24 to 26:

**Para-24:**

*To endorse their claim, the accused nos. 2 & 3 has not entered into the witness box, but specifically drawn the attention of this court towards the statement of accounts tendered on behalf of the complainant company, which are at Exh. Nos. 56 to 58, wherein the amount of Rs. 10 lakhs was shown towards the interest against the outstanding amount as per the ledger*



*extract (Exh. No. 33). It reveals from the document at Exh. No. 58 that the complainant charged the rate of interest @ 12 % upon the outstanding amounts and mentioned that balance interest is receivable for the amount of Rs. 56,47,628/- and same is done by the company in the absence of consent of the accused and said fact is also not informed to them in writing. On the contrary, the defence Advocate attracted the attention of this court towards the following admissions given by C.W. No. 2 during his cross-examination.*

- A. He has not filed any document to show that he is working as Account Supervisor in the complainant company.*
- B. He did not receive any witness summons from this court.*
- C. He has not mentioned the name of the computer, printer and which ink was used while taking the prints of extract of ledger account, Exh. Nos. 56 to 58.*
- D. He imposed 17.5 % tax on the goods amount.*
- E. He has not prepared the print outs of the documents at Exh. Nos. 30 and invoices filed in the present case.*
- F. He has not intimated in writing to the accused in respect of balance of interest amount and Rs. 10 lakhs were adjusted towards the interest amount.*
- G. There is no procedure to impose interest before sending invoices to the customer.*
- H. It is nor mentioned on the invoices in respect of imposing interest for the late payment. i. He has not mentioned in Exh. No. 56 about the invoice numbers for imposing interest charges.*
- I. There is no procedure to obtained the amount of material mentioned in the invoice immediately from the customer.*

**Para-25:**

*Perused the contents of invoices and debit note, which are at*



Exh. Nos. 28 to 30 and 31. It reveals that the transaction of sale covered by this bill has been effected by the complainant company in the regular course of its business, but nowhere mentioned that the 12 % interest will be imposed for the late payment. Under such circumstances, the imposing of charges towards interest by the complainant company is totally invalid and illegal as the said fact was not consented by the accused and also not informed them in writing that amount of Rs. 10 lakhs was adjusted towards the amount of interest accrued due to late payment. It means that complainant company has not come with clean hands for the justice.

Para-26:

Furthermore, as per the extract of ledger account for the period 01.04.2012 to 31.03.2013, the closing balance amount was Rs. 50,17,589/- and same was outstanding against the accused no. 1 company. The disputed cheques in the present case and in C.C. No. 673/S5/2013 were issued by accused no. 2 on behalf of accused no. 1 company on 04.01.2013 and its aggregate total amount comes to Rs. 48,65,9787- The extract of debit note no. 7 dated 31.12.2012 is of Rs. 82,503/-. It can easily be inferred that disputed cheques were issued on 04.01.2013 and on the date of issuance of the same, there was no outstanding mentioned in the extract of ledger account (Exh. No. 33). Furthermore, it has come on the record during the cross-examination of C.W. No. 1 that:

- i. Exh. No. 33 does not have acknowledgment of the accused.
- ii. The complainant company do not file the copies of challan or delivery receipts.
- iii. He cannot explain as to where, when, on which date and which place, he has accepted the cheques.



- iv. *The accused made payment of Rs. 10 lakhs to the Complainant company by cheque in the month of October 2012.*
  - v. *The complainant company do not have any document to show that it charges interest towards outstanding amount.*
  - vi. *The complainant company never sent any letter to the accused for claiming interest on the amount mentioned in the invoices and there was no inter-se agreement for such payment of interest.*
  - vii. *He had not given instructions of demand notice personally*
  - viii. *Accused no. 3 has not signed any document on behalf of the complainant company.*
  - ix. *There is no mention in the invoices that if the payment is made at late, the interest will be imposed for the delay.*
  - x. *Accused have paid all the dues before the disputed invoices.*
  - xi. *The complainant company imposed amount of interest, when the disputed cheques were dishonored.*
  - xii. *He has not produced any documentary evidence till today to show that the amount of Rs. 10 lakhs was imposed for the due amount as an interest.*
  - xiii. *The imposition of interest of Rs. 10 lakhs towards the due amount is not mentioned in the complaint or evidence affidavit.*
6. After disposal of the above two NI Act cases, the Operational Creditor got issued a demand notice dated 11.03.2019 for an amount of Rs. 50,17,589/- for which the Corporate Debtor sent reply notice dated 19.03.2019 denying their liability. Thereafter, the above company petition was filed by the Operational Creditor on 20.08.2019 claiming an amount of Rs. 50,17,589/-.



7. Thus, it is very clear from the above observations and findings in the NI Act cases that the Operational Creditor is not entitled to charge interest. However, the Operational Creditor is once again claiming interest ignoring the findings in the judgments of NI Act cases as well as in the absence of a written contract. This tribunal is conscious of the fact that the observations and findings of a criminal court are not binding in civil proceedings and whereas the observations and findings of civil proceedings are binding in criminal proceeding as per the settled proposition of law. However, it is settled proposition of law as laid down by Hon'ble NCLAT in various authoritative pronouncements that an Operational Creditor is not entitled for interest in the absence of any written contract between the parties. It is important to observe here that there is no stipulation for payment of interest on the invoices in case of any delay in making payment by the Corporate Debtor. Therefore, this bench has no hesitation to hold that the Operational Creditor is not entitled to claim any interest in this case on both counts.
8. It is very surprising to observe here that the Operational Creditor filed the present Company Petition specifically admitting in Part-IV of the petition that it has received Rs. 10,00,000/- from the Corporate Debtor which has been appropriated by them towards interest by once again raising dispute that they are entitled to charge interest.
9. Therefore, it is very clear from the conduct of the Operational Creditor that they are relying on the admission of liability of Rs. 39,35,086/- in the balance sheet of the Corporate Debtor for the purpose of saving the period of limitation for filing the above Company Petition and in the same breath demanding the entire amount ignoring the admission of liability in the



balance sheet of the Corporate Debtor while it comes to recovery. Therefore, it is very clear that the Operational Creditor is approbating and reprobating with regard to their claim and thus there exists a dispute between the parties regarding the exact claim. If at all the Operational Creditor intends to succeed basing on the admission of liability, the Operational Creditor ought to have issued a Demand Notice for Rs. 39,35,086/- and filed present company petition for Rs. 39,35,086/- only in which case the Corporate Debtor would have left without any defence on both counts of limitation & liability and the Company Petition ought to have been admitted by this tribunal. However, the Operational Creditor got issued demand notice calling upon the entire amount of Rs. 50,17,589/- ignoring Rs. 10,00,000/- payment received by them by hitting a “self-goal” and created dispute by themselves as per their own case. Thus, the demand notice issued by Corporate Debtor itself is not correct. Thus, it is very clear from the conduct of the Operational Creditor that they have not approached this tribunal with clean hands and using IBC as recovery proceedings.

10. Therefore, for the aforesaid reasons, this bench is of the considered opinion that there exists a pre-existing dispute between the parties with regard to the exact amount of liability and the present Company Petition needs to be dismissed on that score. Accordingly, the above Company Petition is **dismissed**.

Sd/-

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**

//Rakesh//