



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court-II)
KOLKATA**

C.P. (IB) No. 48/KB/2022

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

In the matter of:

Bajrang Steel Trading Company (India) Private Limited [CIN U27106WB1986PTC040465], having its registered office at 23A Netaji Subhash Road, Kolkata – 700001;

....Operational Creditor

-Versus-

Ramkrishna Engineering Private Limited [CIN U29253WB2013PTC196024], having its registered office at P.O. New Kolorah, NH-6, P.S. Domjur, Howrah – 711302;

...Corporate Debtor

**Date of hearing: 28 March, 2023
Order Pronounced on: 03 May, 2023**

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical)

For the Operational Creditor :	Mr. Shaunak Mitra, Adv.
:	Mr. Varun Kothari, Adv.
:	Mr. Nikunj Berlia, Adv.
For the Corporate Debtor :	Mr. Sourojit Dasgupta, Adv.
:	Mr. Victor Dutta, Adv.



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ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Shashi Churiwala, Authorised Signatory, Bajrang Steel Trading Company (India) Private Limited (*'Operational Creditor'*) duly authorised *vide* Board Resolution dated 23 June, 2021¹ for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against Ramakrishna Engineering Private Limited (*'Corporate Debtor'*).
3. The present Petition was filed on **28 December, 2021** before this Adjudicating Authority. The total amount claimed in default is Rs.1,45,34,345/- (Rupees One Crore Forty-Five Lakh Thirty Four Thousand Three Hundred Forty Five only) [*Principal – Rs.47,49,701/- and Interest – Rs. 97,84,644/-*]. First date of default is stated to be as on 16 May, 2017 and the last date of default is stated to be as on 25 June, 2019.
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs.1,00,00,000/- (Rupees One Crore only) with subscribed share capital of Rs.28,00,000/- (Rupees Twenty Eight Lakh only). Part – IV of the Petition deals with the particulars of the Operational Debt.
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - 5.1 The Corporate Debtor had approached the Operational Creditor for supply of various types of iron goods, equipments and other allied items. The Corporate Debtor used to place orders either verbally or thorough email or telephonically for supply of such goods. In terms of such orders, the Operational Creditor supplied goods to the Corporate Debtor.

¹ Page 354 of the Petition.



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- 5.2 The delivery of goods was duly accepted by the Corporate Debtor in good order and condition without any objection or demur at any material point of time and the same was appropriated and utilized by the Corporate Debtor for profit.
- 5.3 The aggregate claim raised by the Operational Creditor on the Corporate Debtor towards supplies was Rs.52,99,701/-(Fifty Two Lakh Ninety Nine Thousand and Seven Hundred and one only).Such invoices were to be paid by the Corporate Debtor on the terms and conditions as mentioned in the Invoices. Value Added Tax, Excise Duty and other statutory taxes and duties as applicable were charged.
- 5.4 The Corporate Debtor never raised any disputes in respect to the correctness and validity of the Invoices raised by the Operational Creditor. In due acknowledgement and admission of Corporate Debtor's liability to make payment of such Invoices, the Corporate Debtors have made part payments from time to time towards part liquidation of their outstanding dues covered by such Invoices.
- 5.5 After part payment received from the Corporate Debtor, a sum of Rs.47,49,701.00/- (Forty Seven Lakh Forty-Nine Thousand Seven Hundred and one only) remained due owing and payable by the Corporate Debtor.
- 5.6 The Operational Creditor and the Corporate Debtor treated the accounts maintained under the instant transaction as open, mutual running and continuous. The outstanding principal sum has unambiguously admitted and acknowledged by the Corporate Debtor and recorded in their Books of Accounts and is an admitted debt payable by Corporate Debtor to Operational Creditor.
- 5.7 The Corporate Debtor in admission of its debts has also acknowledged, signed and issued balance confirmation in favor of Operational Creditor dated April 1, 2016. The Operational Creditor has made written repeated requests and reminders, including issuance of legal notice to the Corporate Debtor for making payment of the balance admitted outstanding dues but



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despite receipt of all such e-mails the Corporate Debtor has failed and neglected to make payment of the balance outstanding principal dues amounting to Rs.47,49,701/-(Rupees Forty Seven Lakh Forty-Nine Thousand Seven Hundred and One only)

5.8 The Corporate Debtor has failed, refused and neglected to make payment of its admitted dues despite representations and various reminders. The Invoices raised by the Operational Creditor contained a specific provision for payment of Interest @24% per annum from the date of presentation

6. *Per contra, submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor would be as under:*

6.1 That, this Adjudicating Authority does not have the pecuniary jurisdiction to determine the said petition, inasmuch as the principal amount claimed to have been in default is below the threshold limit as prescribed under the law. The principal amount claimed to have been in default is below Rs. 1 Crore, and therefore, the said petition deserves to be dismissed in limine.

6.2 In Part IV of the petition, it has been admittedly alleged that the principal amount in default is Rs. 47, 49, 701/-. The balance amount entirely consists of interest.

6.3 Admittedly, there is no contract or agreement between the parties, either for payment of interest, or for payment of any amount. The parties never agreed upon payment of any interest whatsoever. Not a single correspondence has been produced by the operational creditor to the effect that the corporate debtor had ever agreed to pay interest on any purportedly outstanding amount.

6.4 Moreover, the Corporate Debtor by its letter dated 01 November 2021 issued in response to the demand notice, the Corporate Debtor had specifically denied the interest component, along with the principal amount.

6.5 Further, from a perusal of the Computation Sheet annexed at Page 353 of the said petition itself, it will be evident that the alleged principal amount claimed to be in default has been mentioned as Rs. 47,49,701/-, which is not



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inclusive of interest at all. The interest component has been separately added to the said alleged claim.

- 6.6 The Balance Confirmation Statement issued for 01 April, 2015 to 31 March, 2016 is a forged document and the seal or the signature appearing thereat is not known to the corporate debtor.
- 6.7 Even assuming without admitting that the said Balance Confirmation Statement is genuine, the same also does not indicate any component of interest. A mere comparison between Page 319 and 353 of the said petition would demonstrate that even as per the Operational Creditor itself, as on 31 March, 2016, the alleged principal amount was Rs. 52,99,701/-, which was not inclusive of the interest component.
- 6.8 The claim of the Operational Creditor is hopelessly barred by the laws of limitation and by the principles of waiver, acquiescence and estoppel and the principles analogous thereto.
- 6.9 Furthermore, there are pre-existing disputes with regard to the alleged operational debt. The Corporate Debtor had disputed the Operational Creditor claim from the very beginning. No amount was ever due and payable by the Corporate Debtor to the Operational Creditor.
- 6.10 In a previous round of litigation, one of the sister concerns of the Operational Creditor had preferred an application under Section 9 of the Code, being C. P. (IB) No. 1448/KB/2019 against the Corporate Debtor herein, wherein similar invoices pertaining to the same period, and similar Balance Confirmation Statement of the same period were sought to be relied upon. However, no document was produced in support thereof.
- 6.11 The Corporate Debtor has sought to rely upon a purported Balance Confirmation Statement appearing at Page 141 of the petition, wherein the Corporate Debtor had allegedly admitted its liability to the applicant, as on 31 March 2016. The Corporate Debtor states that the purported balance confirmation statement has not been signed by the corporate debtor. The Operational Creditor has produced a forged and manufactured document



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before this Adjudicating Authority, which has been brought into existence by the Operational Creditor for the purpose of misleading this Adjudicating Authority.

- 6.12 Further, even assuming without admitting that the signature appearing thereat is not forged, however, the person who has put his signature on the said balance confirmation statement was never authorized to sign anything on behalf of the Corporate Debtor. Moreover, the seal of the Corporate Debtor as appearing in the balance confirmation statement is not that of the corporate debtor.

Analysis and Findings

7. We have heard the Learned Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the documents on record.
8. Before delving into the merits of the case the preliminary issue that arises is ***Whether 'interest' can be clubbed with principal debt to cross-over the threshold limit of 1 Crore for filing petition under Section 9 of the Code?***
9. In view of our stances taken in ***Gandhar Oil Refinery (India) Limited v. City Oil Private Limited [C.P. (IB) No. 150/KB/2021]***, where we have relied on the Judgement given by the Hon'ble High Court at Karnataka in ***Jyothi Limited vs. Boving Fouress Limited [MANU/KA/1022/2000]*** has been categorical in holding that, albeit in that a proceeding for winding up under section 433(e) of the Act that:

“(a) The term ‘debt’ refers to an ascertained and definite amount ‘due’ and does not refer to a claim for compensation/damages or a claim which requires assessment by a court before it becomes due and payable.

(b) The term ‘debt’ may refer not only to ‘principal’ (value of goods or amount advanced), but also to interest due thereon, where there is a contract to pay interest. Where the contract specifically provides for payment of interest, or where there is an admission or promise to pay interest by the company or where in proceedings for recovery of money, a competent court or arbitrator has determined the liability to pay interest,



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then non-payment of interest (whether with principal or interest alone) may amount to inability to pay debts.

(c) 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 on the part of the purchaser to pay interest. This is because a credit bill or an invoice is a unilateral demand by the supplier and is neither a bilateral agreement nor a promise by the purchaser to pay interest. Interest can be awarded on the basis of a provision in a bill/invoice, if it is supported by an agreement or promise to pay interest by the purchaser. Such agreement may be established with reference to correspondence, or by countersigning of the bill by the purchaser, or by acceptance by the purchaser of the term in the bill relating to interest. Where in the absence of an agreement or contract for payment of interest on the value of goods supplied, a notice of demand is sent by the supplier requiring payment of the value of goods supplied with interest thereon and a reply is sent by the purchaser in general terms seeking time to pay the bill amount, such reply cannot be construed as an admission to pay interest. 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 a debt due, for the purpose of a winding up petition. In the absence of a contractual or legal liability, mere omission to deny a demand made in a notice will not create a liability, nor act as an estoppel in regard to a subsequent denial by the company in legal proceedings.”

10. Reliance were also placed on *Steel India v. Theme Developers Pvt. Ltd.*[*Company Appeal (AT) (Insolvency) No. 1014 of 2019*] Hon’ble NCLAT observed that;

“It is settled that the charging of interest, ought to be an actionable claim, enforceable under law, provided it was properly agreed upon between the parties.”



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- 11.** In *Pavan Enterprises v. Gammon India*[*Company Appeal (AT) (Insolvency) No. 148 of 2018*]the Hon’ble NCLAT was of the view that ;
“*If in terms of any agreement interest is payable to the Operational of Financial Creditor then the debt will include interest.*”
- 12.** Section 3(6) of the Code defines “claim” as –
“(a) *a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;*
(b) *right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;*”
- 3(6)(b) is explicit that a claim is also a right to remedy for ‘breach of contract’ therefore unless the ‘contract’ is explicit about the liability to pay interest in default, no actionable claim can be said to exist.
- 13.** Further, from the records it is seen that the Operational Creditor has failed to bring forth any agreement between the parties that a default in payment would attract interest. Further, the interest of 24% is levied only in terms of a unilateral clause in the invoice and the Corporate Debtor never agreed or promised. Without clubbing such interest with the Principal amount, threshold as per Section 4 of the Code is not met. Hence, in light of the above precedents *C.P. (IB) No. 48/KB/2022* is *dismissed*
- 14.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The order is pronounced on 03rd day of May, 2023

SA [LRA]