

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT JAIPUR

CP No (IB) 215/9/JPR/2019

M/S JINDAL FILAMENTS PVT. LTD.

...Applicant/Operational Creditor

VERSUS

M/S INDUS GARTEX PVT. LTD.

...Respondent / Corporate Debtor


Date:01.03.2024

SPEAKING TO MINUTES ORDER-IN-CHAMBERS

The final order was pronounced on 22.02.2024 in the instant Company Petition and uploaded on the website. However, on perusal of the order, it is noted that some typographical error occurred in the order wherein the Company Petition Number in the order has been wrongly mentioned as CP(IB)64/9/JPR/2021. Hence, by taking the suo-moto action under Rule 154 of the National Company Law Tribunal Rules, 2016, the aforesaid correction is made i.e. the *CP(IB) 64/9/JPR/2021* shall be read as ***CP(IB)215/9/JPR/2019***. This order be uploaded and send by the Registry along with the main order.



(Rajeev Mehrotra)
Technical Member



(Deep Chandra Joshi)
Judicial Member

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

IA No. 565/JPR/2023 &
CP No. (IB)- 64/9/JPR/2021

(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)

IN THE MATTER OF:

M/S JINDAL FILAMENTS PVT. LTD.

5046, Trade Housenr Rushabh Petrol
Pump Ring Road, Surat, Gujarat-395002.

E-mail: jindaltrends@gmail.com

...Applicant/Operational Creditor

VERSUS

M/S INDUS GARTEX PVT. LTD.

G 1-138, EPIP-Garment Zone, Sitapura
Industrial Area, Jaipur-322022.

E-mail: indusinco@gmail.com

...Respondent / Corporate Debtor

AND IN THE MATTER OF:

IA (IBC) NO. 565/JPR/2023

M/S INDUS GARTEX PVT. LTD.

G 1-138, EPIP-Garment Zone, Sitapura
Industrial Area, Jaipur-322022.

E-mail: indusinco@gmail.com

...Applicant/Corporate Debtor

VERSUS

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M/S JINDAL FILAMENTS PVT. LTD.
 5046, Trade Housenr Rushabh Petrol
 Pump Ring Road, Surat, Gujarat-395002.
 E-mail: jindaltrends@gmail.com

...Respondent/ Operational Creditor

For Petitioner/Operational Creditor : Dhiren R. Dave, Adv.
For Respondent/Corporate Debtor : Naresh Kumar Sejvani, Adv.

Order Pronounced On: 22.02.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by *M/s Jindal Filaments Private Limited* ('Operational Creditor' / 'Applicant') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') in the matter of *M/s Indus Gartex Private Limited* ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Applicant, *M/s Jindal Filaments Private Limited*, is a Private Limited Company. Their registered office is situated at 5046, Trade House, near Rushabh Petrol Pump, Ring Road, Surat, Gujarat-395002. The alleged default on the part of the Respondent for the non-payment of operational dues amounts to Rs. 86,12,995.43/- (Rs. Eighty-Six Lakh Twelve Thousand Nine Hundred Ninety-Five and Forty-Three Paise Only) which includes interest amount of Rs. 23,37,100.43/- (Rupees Twenty-Three Lakh Thirty-Seven Thousand One Hundred and Forty-Three Paise Only)

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3. The Corporate Debtor, *M/s Indus Gartex Private Limited*, is also a private company incorporated under the Companies Act, 1956 in 2008. The Corporate Debtor has an Authorised Share Capital of Rs. 20,00,000/- (Rs. Twenty Lakh Only) and a Paid-Up Share Capital of Rs. 20,00,000/- (Rs. Twenty Lakh Only).
4. The Applicant has made various sale transactions with the Corporate Debtor however no payments have been made to the Applicant with respect to sale transactions. Thereafter the Applicant has issued a Demand Notice under Section 8 of the Code on 08.06.2019 for the payment of money alongside interest, Rs. 84,10,791.26/- (Rupees Eighty-Four Lakh Ten Thousand Seven Hundred Ninety-One and Twenty-Six Paise Only), which is enumerated in Part IV of the Application:

1.	Total amount of debt, Details of transactions on account of which debt fell due, and the date from which such debt fell due.	Amount of Debt Due: Rs. 86,12,995.43/- (Rupees Eighty-Six Lakh Twelve Thousand Nine Hundred Ninety-Five and Forty-Three Paise Only)
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 86,12,995.43/- (Rupees Eighty-Six Lakh Twelve Thousand Nine Hundred Ninety-Five and Forty-Three Paise Only) Date on which the default occurred: Due date of payment is 20 days from the date of Invoice. However, giving 10 more days as grace period, date of default is calculated as 30 days from the date of Bills and interest calculated accordingly.

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		Date of Default: 09.08.2017
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5. Consequent to notice issued by this Adjudicating Authority the Respondent has filed its reply *vide* Dairy No. 35/2020 dated 08.01.2020, and stated that:

5.1 The Corporate Debtor has made certain payments to the Applicant and its affiliates firm/associates. Further, it was agreed between the parties that the Corporate Debtor shall make the entire payment within the period of three (3) years and Rs. 41,59,856/- (Rupees Forty-One Lakh Fifty-Nine Thousand Eight Hundred Fifty-Six Only) has already been paid.

5.2 It is further stated that steps were taken to settle the account of the Applicant and agreed between the parties that the total amount to the tune of Rs. 50,00,000/- (Rupees Fifty Lakh Only) shall be paid within the period of 25 months by paying Rs. 2,00,000/- (Rupees Two Lakh Only) per month starting from 10.06.2019.

5.3 Despite the payment of the installments as per the mutual understanding, the Applicant has served the Demand Notice dated 08.06.2019 to the Corporate Debtor and subsequently has filed the present Application. The Corporate Debtor has considered that there is no default has occurred and the present Application is filed prematurely.

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- 5.4 The present Application is not filed in the prescribed form and format containing the complete and mandatory details which are made of law such as due date, record of default, particulars of security held, and list of documents to prove the existence of financial debt.
- 5.5 The Corporate Debtor has submitted that the Applicant has not annexed any documents in support of the present Application. Moreover, the Corporate Debtor has made the payment of the alleged amount demanded by the Applicant. The present Application has been filed with malicious intent and not for the legitimate purpose of the resolution of the Corporate Debtor.
6. The Applicant has filed a rejoinder vide Dairy No. 231/2020 dated 30.01.2020 wherein it is stated that the present petition is complete in all aspects. There is an admitted default on the part of the Corporate Debtor and further, it is stated that there was no settlement concluded between the parties. The Corporate Debtor has admitted the defaults in their ledger.
7. In the meantime, the present Petition was withdrawn on the basis Memorandum of Understanding ('MOU') entered between the parties, however, the settlement was breached. Later, the Applicant filed a Restoration Application (IB) No. 01/JPR/2022 and this Adjudicating Authority vide Order dated 01.06.2023 restored the main *CP No (IB) 215/9/JPR/2019*.

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8. The Corporate Debtor has filed an Interlocutory Application ('IA') No. 565/JPR/2023 vide Diary no. 2467/2023 dated 11.10.2023 to place on record the proof of payment under the settlement deed dated 07.10.2021 wherein it is stated that:

8.1 The Corporate Debtor has submitted in the view of MOU executed between the parties Rs. 60.75 lakhs have already been paid to the Operational Creditor. Copy of the ledger account statement along with relevant bank statement are annexed as Anneure-1 of the IA. The details of the payment being reproduced for ease of reference, read as follows:

INDUS GARTEX PRIVATE LIMITED
G1-138, EPIP SITAPURA INDUSTRIAL AREA JAIPUR (RAJASTHAN)

JINDAL FILAMENT PRIVATE LIMITED - UNIT 1 (EXPORT DIVISION)
(From 10-June-19 to 10-Oct-2023)

(6)

Annexure-1

DATE	BANK NAME	VCH TYP	AMOUNT	PAGE NO.
10-Jun-19	To Axis Bank Current A/c	Payment	₹ 2,00,000.00	7
13-Sep-21	To BANK OF BARODA O/D A/C	Payment	₹ 75,895.00	8
16-Oct-21	To Axis Bank Current A/c	Payment	₹ 5,00,000.00	9
29-Nov-21	To BANK OF BARODA O/D A/C	Payment	₹ 5,00,000.00	10
24-Dec-21	To Axis Bank Current A/c	Payment	₹ 5,00,000.00	11
25-Jan-22	To BANK OF BARODA O/D A/C	Payment	₹ 5,00,000.00	12
28-Feb-22	To Axis Bank Current A/c	Payment	₹ 5,00,000.00	13
07-Apr-22	To BANK OF BARODA O/D A/C	Payment	₹ 2,50,000.00	14
22-Apr-22	To BANK OF BARODA O/D A/C	Payment	₹ 2,50,000.00	15
29-Jul-22	To Axis Bank Current A/c	Payment	₹ 2,00,000.00	16
26-Aug-22	To BANK OF BARODA O/D A/C	Payment	₹ 1,50,000.00	17
06-Oct-22	To BANK OF BARODA O/D A/C	Payment	₹ 2,50,000.00	18
14-Oct-22	To BANK OF BARODA O/D A/C	Payment	₹ 2,50,000.00	19
25-Apr-23	To BANK OF BARODA O/D A/C	Payment	₹ 15,000.00	20
11-May-23	To BANK OF BARODA O/D A/C	Payment	₹ 25,000.00	21
29-May-23	To BANK OF BARODA O/D A/C	Payment	₹ 25,000.00	22
27-Jun-23	To BANK OF BARODA O/D A/C	Payment	₹ 25,000.00	23
07-Jul-23	To BANK OF BARODA O/D A/C	Payment	₹ 25,000.00	24
18-Jul-23	To BANK OF BARODA O/D A/C	Payment	₹ 40,000.00	25
31-Jul-23	To BANK OF BARODA O/D A/C	Payment	₹ 50,000.00	26
05-Aug-23	To BANK OF BARODA O/D A/C	Payment	₹ 50,000.00	27
11-Aug-23	To BANK OF BARODA O/D A/C	Payment	₹ 30,000.00	28
19-Aug-23	To BANK OF BARODA O/D A/C	Payment	₹ 35,000.00	29
24-Aug-23	To BANK OF BARODA O/D A/C	Payment	₹ 50,000.00	30
01-Sep-23	To BANK OF BARODA O/D A/C	Payment	₹ 50,000.00	31
18-Sep-23	To BANK OF BARODA O/D A/C	Payment	₹ 25,000.00	32
05-Oct-23	To BANK OF BARODA O/D A/C	Payment	₹ 15,29,164.00	33
10-Oct-23	To BANK OF BARODA O/D A/C	Payment	₹ 1,75,836.00	34
	TOTAL AMOUNT		₹ 62,75,895.00	

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- 8.2 It is stated that parties have already settled the matter by arriving at settlement on 07.10.2021, under which the Corporate Debtor had paid and satisfied the outstanding debt of the Operational Creditor.
9. The Operation Creditor has filed a reply to the IA vide Dairy No. 3044/2023 dated 20.12.2023 whereby it is stated that:
- 9.1 It is submitted that the present IA is filed by the Corporate Debtor after the detailed arguments in the main matter on 19.09.2023. It is a cardinal principle of the Judicial Process that once the matter is argued and reserved for orders, no party can approach the judiciary.
- 9.2 Further, it is stated that the Corporate Debtor has not made the full payment along with the interest. As per the MOU it was agreed between the parties that the Corporate Debtor has agreed to pay the outstanding amount with the applicable interest from the date of the original bills of invoice however the Corporate Debtor has miserably failed to make the payment as per the terms of the settlement agreement.
10. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder, Written Submissions, and the Documents enclosed with the Application.
11. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of the Laws of

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Limitation, as the date of default as per part-IV is on 09.08.2017, and the Application was filed before this Adjudicating Authority on 21.08.2019. Hence, the period of three years after the default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.

12. On the perusal of the matter in hand as per Section 9(5)(ii) of the IBC, 2016 the Adjudicating Authority can reject the Application if there has been payment of the unpaid Operational Debt.

Section 9 (5)(ii) of the IBC is reproduced below for ease of reference:

“Section 9(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order-

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been 1 [payment] of the unpaid operational debt; ...”

13. The issue for our consideration is whether there is an unpaid operational debt. The present petition is filed by the Operational Creditor for claiming an alleged amount of Rs. 86,12,995/- (Rupees Eighty-Six Lakh Twelve Thousand Nine Hundred Ninety-Five Only) which includes interest amount of Rs. 23,37,100/- (Rupees Twenty-Three Lakh Thirty-Seven Thousand and One Hundred Only).
14. Upon the scrutiny of the ledger account of the Corporate Debtor in the records it is seen that the Corporate Debtor has made the payment of Rs. 62,75,895/- (Rupees Sixty-Two Lakh Seventy-Five Thousand Eight

Hundred Ninety-Five Only) which has been paid to the Applicant in the various installments commencing from 10.06.2019 to 10.10.2023. Copy of the Ledger account maintained by the Corporate Debtor and Bank Statements are annexed as Annexure-1 of the *IA (IBC) No. 565/JPR/2023* filed by the Corporate Debtor. It is noted that while the Restoration Application was allowed and the main CP was restored, the Applicant continued to receive/take the principal amount. Also, in the MOU for settlement, the Applicant has waived the interest part and settled to receive an amount Rs. 60,75,895/- (Rupees Sixty Lakh Seventy-Five Thousand Eight Hundred Ninety-Five Only) whereas in the Petition now he is claiming the principal amount coupled with interest. It is observed that the amount of settlement was the same as the principal amount which has already been received by the applicant in toto.

15. Moreover, the alleged amount in default Rs. 86,12,995/- (Rupees Eighty-Six Lakh Twelve Thousand Nine Hundred Ninety-Five Only) is inclusive of the interest amount of Rs. 23,37,100/- (Rupees Twenty-Three Lakh Thirty-Seven Thousand and One Hundred Only) as per the Part-IV of the petition. It is pertinent to note that the Corporate Debtor has already made the payment of the whole principal amount of Rs. 62,75,895/- (Rupees Sixty-Two Lakh Seventy-Five Thousand Eight Hundred Ninety-Five Only). Hence, declaring the Corporate Debtor as insolvent by ordering CIRP only because of the default in paying interest, would be against the spirit of IBC.

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The Operational Creditor would nevertheless have the right to claim and recover interest if it is permitted under any other law, by moving an appropriate forum. The Adjudicating Authority does not decide the amount that is due to the Operational Creditor.

16. At this juncture, we consider it relevant to refer to the Judgment of Hon'ble NCLAT in the matter of *S. S. Polymers v. Kanodia Technoplast Ltd. in Company Appeal (AT) (Insolvency) No. 1227 of 2019, dated 13.11.2019.*

The relevant extracts are given below:

“5. 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 realisation 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 realise 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.”

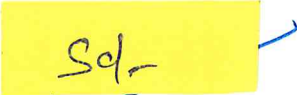
17. Given the aforesaid discussion, it can be inferred that the “interest” component alone cannot be claimed or pursued without the debt to trigger a CIR process against the Corporate Debtor. Further, the present Application pursued for the realization of the interest amount alone is against the intent of the IBC, 2016.
18. Further in the matter of *Permal Wallace (P.) Ltd. v. Narbada Forest Industries (P.) Ltd.* in 'Company Appeal (AT) (Ins) No. 36 of 2023 it was held that:

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"5. Having heard Learned Counsel for the parties, we are of the view that Adjudicating Authority did not commit any error in rejecting Section 9 Application. It has been laid down by the Hon'ble Supreme Court in "Swiss Ribbon Pvt. Ltd. v. Union of India" (2019) 4 SCC 17, IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of the interest and application was not filed for resolution of any insolvency of the Corporate Debtor. We are of the view that no error has been committed by the Adjudicating Authority in rejecting Section 9 Application filed by the Appellant. There is no merit in the Appeal, the Appeal is dismissed."

19. We, therefore conclude that there is no debt due on the part of the Corporate Debtor of which default can be imputed on the Corporate Debtor to enable the Operational Creditor to initiate Section 9 proceedings.
20. Hence, in the view of above we are not inclined to commence CIRP of the Corporate Debtor. The present Petition is Dismissed. The Order in the present matter is made in terms of Section 9 (5) (ii) of IBC, 2016, and based on the facts and pleadings submitted by the parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority.
21. Accordingly, CP No. (IB)64/9/JPR/2021 is dismissed and pending IA if any stands disposed off thereby.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**