

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

1. I.A. 222/2022

IN

C.P.(IB)-3994(MB)/2019

CORAM: SHRI. H.V. SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **11.05.2023**

NAME OF THE PARTIES: Vandana Enterprises Pvt Ltd

V/s.

Varun Sacks Pvt Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Liquidator Mr. Pramod Kumar Dokania is present through virtual hearing.

I.A. 222/2022

Order pronounced in the open court vide separate order. In the result, the
above Interlocutory Application is **dismissed**.

Sd/-
MADHU SINHA
Member (Technical)
//SKS//

Sd/-
H.V.SUBBA RAO
Member (Judicial)

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

I.A. 222/2022

IN

C.P.(IB)-3994/(MB)/2019

(Under Section 60(5) of the Insolvency and Bankruptcy
Code 2016)

IN THE MATTER BETWEEN,

Vandana Enterprises Pvt. Ltd.

.....Operational Creditor

Vs.

Varun Sacks Pvt. Ltd.

.....Corporate Debtor

AND IN THE MATTER OF

Rajivkumar Nirmalkumar Baid,

Sole Proprietor of M/s. Rainbow Polychem

.....Applicant

Vs

CA Mr. Pramod Kumar Dokania

..... Interim Resolution Professional

Reserved for order on: **23.03.2023**

Order pronounced on: **11.05.2023.**

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

For the Applicant: Mr. Ashish Verma, advocate

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

1. The above Interlocutory Application is filed by one Mr. Rajivkumar Nirmalkumar Baid, sole proprietor of M/s Rainbow Polycham having aggrieved and dissatisfied against the action of the liquidator in restricting their claim only to a principal amount of Rs. 51,91,000/- and rejecting the interest portion of Rs. 20,85,764/.
2. Since the Corporate Debtor was ordered to be liquidated vide order dated 14.02.2022 i.e. after filing the above Interlocutory Application by the Applicant, the Liquidator (Erstwhile IRP) filed a detailed reply opposing the above application. The relevant Paras of affidavit in reply are extracted hereunder for ready reference.
 - 3(e) There is no any purchase order or written contract with agreement showing credit terms and to pay 24% interest payment on delayed payment between the Purchaser M/s Varun Sacks Private Limited (Corporate Debtor) and M/s Rainbow Polychem (Operational Creditor/Applicant).
 - 3(f) There is no any amount claimed as Interest for delayed payment by the Operational creditor in past these invoices outstanding against Interest portion and claims were only made for the principle amount. Refer copy of letter sent by the applicant asking the corporate debtor to pay Rs 52 Lakhs for which post-dated cheque was issued. Principle amount was o/s as 51.91 Lakhs (or 52 Lakhs).
 - 3(g) M/s Varun Sacks Pvt. Ltd (Corporate Debtor) has also never confirmed any interest payable liability over and above the principle amount. They only have confirmed that they will pay all due amount once the financial situation improves and nowhere, there was any specific acceptance of Interest (which was never claimed) done by the corporate debtor. Refer letter dated 23rd August 2019 by the corporate debtor in response to letter send by the applicant dated 23rd July 2019.

3(h) Transactions between Rainbow Polychem and the corporate debtor started first in Dec 2017 and since then in past also there has been delay of payment made by the corporate debtor (many cases more than 2-3 months) but there has never been any interest charged by the applicant and it was never paid by the corporate debtor. Refer Ledger Extract of Tally data for FY 17-18, FY 18-19 and FY 19-20.

3. Heard Mr. Ashish Verma, counsel appearing for the Applicant and Mr. Pramod Dokania, liquidator in person. After hearing both parties and upon perusing the pleadings the question that needs to be adjudicated is:

Whether the liquidator has committed any illegality or irregularity in disallowing the interest portion from the claim of the applicant?

As seen from the reply, it is clear that the liquidator had rejected the interest portion of the applicant on the ground that there is no contract between the parties for payment of interest and the petitioner did not charge interest on earlier occasions even though certain payments were made belatedly by the Corporate Debtor.

4. From the perusal of the reply and the submissions made by the counsel appearing for the liquidator, this tribunal is thoroughly convinced that the stand taken by the liquidator in rejecting the interest portion is legally correct and is in accordance with law laid down by the Hon'ble NCLT in various rulings including *Rohit Motawat Vs. Madhu Sharma* in Company Appeal No. 1152 of 2022 wherein the Hon'ble NCLAT set aside the order of the adjudicating authority by relying on the judgment of the Hon'ble High Court of Karnataka in *Jyothi Limited Vs. Boving Fouress Limited* in Company Petition No. 48 of 1998 wherein the Karnataka High Court has observed that the invoice is a Unilateral document and interest cannot be claimed until and unless it is signed by the parties. In the present application, the case of the applicant stands in lesser

following footing to the observations of the Karnataka High Court since the applicant has no purchase order or written contract showing payment of interest obligation on the part of the Corporate Debtor.

5. For the aforesaid reasons, this bench did not find any illegality or irregularity committed by the liquidator in disallowing the interest portion of the applicant and therefore, this bench is of the considered view that there is no merit in the above application and the same is liable to be dismissed. Accordingly, the above I.A. is **rejected**.

Sd/-
MADHU SINHA
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)