

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. NO. 1065/I&BP/NCLT/MAH/2017**

Coram: B. S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

In the matter of under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016.

Viraj Profiles Limited ... Applicant/ Operational Creditor

Vs.

Kinetic Engineering Limited ... Corporate Debtor

Counsel for Applicant/Operational Creditor: Mr. Prakash V Shinde,
Advocate

Counsel for Corporate Debtor: Mr. Prakash Chaugede, Advocate

ORDER

(Heard and pronounced on 21.06.2017)

Per B. S. V. Prakash Kumar, Member (Judicial)

1. It is a Company Petition filed u/s 9 of the Insolvency and Bankruptcy Code, 2016 by the Operational Creditor, viz. Viraj Profiles Ltd. against the Corporate Debtor, viz. Kinetic Engineering Limited for initiation of the Insolvency Resolution Process on the ground that the Corporate Debtor defaulted in making repayment of ₹30,62,106.25 as on 31.1.2017.

2. The case of the Petitioner Counsel herein is that the applicant supplied steel rods to the Corporate Debtor. In pursuance thereof, the applicant raised invoices against the Corporate Debtor on 26.3.2014, 12.1.2015 and 27.7.2015, for an aggregate amount of ₹39,62,472.64. For the Corporate Debtor having failed to repay the balance outstanding ₹20,56,572.25 as on 25.9.2015, the Petitioner has filed this Company Petition for a principal amount of

₹20,56,572.25, plus interest of ₹10,05,534, calculated @ 24% per annum. When this Petitioner, on 3.2.2017, sent notice u/s 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor, mentioning that the Corporate Debtor, as on 31.1.2017, defaulted in making repayment of ₹30,62,106.25, to which, this Corporate Debtor gave reply on 16.2.2017, stating that there is huge discrepancy in the outstanding amount claimed by the Petitioner. Therefore, the reply notice has been sent saying that accounts are to be reconciled to ascertain the exact amount payable to the Petitioner, besides that, the Corporate Debtor categorically mentioned that the Company never agreed to pay 24% interest on the purported principal amount mentioned in the notice sent u/s 8 of the IB Code.

3. Now the case of the Petitioner is that it is entitled not only for the principal amount of ₹20,56,572.25, but also for interest of ₹10,05,534 @ 24% per annum, basing on the order of confirmation/proforma invoice. On perusal of these documents, it appears that this invoice has not been signed either by the Petitioner or the Corporate Debtor. Therefore, this Bench is of the view that these documents are of no use to say that the Petitioner is entitled for 24% interest over the principal amount mentioned in the Form filed by the Petitioner.

4. When this Bench has put it to the Petitioner counsel as to how the Petitioner is entitled for 24% interest claimed in this application, to which, the Petitioner Counsel, instead of showing confirmation by the corporate debtor, changed his tack by relying upon a citation in between *Apeejay Pvt. Ltd vs. Steel Authority of India Ltd. (AP 596/2014-Calcutta High Court order passed on 10.3.2017)* to say that regarding rate of interest, this Petitioner is entitled to make a claim of interest basing on Section 61 of the Sale of Goods Act for the Act permitted to claim interest @24% per annum. He also relied upon another judgement in between the *State of Madras represented by the Director of Industries and Commerce vs. M. A. S. Mehta (AIR 196 Mad 508,*

1964) to say that the person supplying goods is entitled to interest from the date of transaction till the date of realization.

5. The corporate debtor Counsel submits that the Debtor Company has already sent Post Dated Cheques for an amount of ₹18, 72,788 towards the invoices raised by the Petitioner. For the remaining balance amount being in dispute between them, the debtor Counsel has stated the same in the notice as well as before this Bench saying that this balance could be reconciled if the accounts of the Petitioner Company and accounts of the Debtor Company are being verified. Besides this, the Debtor Counsel has also stated that since the Corporate Debtor has not agreed for payment of interest either @24% or any interest, the Petition is liable to be dismissed for having made a false claim in this application. In the submission of the Corporate Debtor, the Corporate Debtor has also filed postal cover of the notice sent u/s 8 of the IB Code from the Petitioner side to prove that the notice has reached to the delivery post office on 6.2.2013, therefore, if the date of receipt of notice, as reckoned under Limitation act, is excluded, then reply sent on 16.2.2017 to the notice u/s 8 given by the Corporate debtor would be definitely within 10 days from the date of notice u/s 8 of the IB Code.

6. The Petitioner has not filed an affidavit saying no notice is given by the Corporate Debtor disputing the claim amount received by the Petitioner herein.

7. On perusal of the records, it appears that these parties have nowhere agreed for payment of interest @24% per annum over the goods received or in the event of default of making repayment to the Operational Creditor.

8. As to the citations placed by the Petitioner Counsel, the ratio decided by the Hon'ble High Court of Calcutta the case supra is in relation to the competency of the Arbitrator in awarding interest on the claim amount. It is not a case where interest claim is granted without confirmation from the

claimant. The dispute in the case supra is in relation to the competency of the Arbitrator in granting interest. Here it is a point as to whether the Corporate Debtor confirmed for payment of interest @ 24% per annum on the goods received by him. This case is not a suit proceeding where an opportunity would come to the parties to verify as to whether the Petitioner is entitled for 24% interest per annum or not. The case is under IB Code, more specially u/s 9 of the Code, to be decided solely on the basis of documents furnished by the Operational Creditor, since there is no document that the Corporate Debtor confirmed to pay interest @ 24%, this Petitioner ought not to have made any such claim for interest @24% in this Company Petition. If at all, the petitioner wanted to rely upon section 61 of the Sale of Goods Act, then the Petitioner should have mentioned in the application that it is entitled to claim interest over the goods supplied to the Debtor basing on section 61 of the Sale of Goods Act but not by showing the document which has no confirmation from the Corporate Debtor. Therefore, now it is not open to the Petitioner to recant its earlier statement and now say that the applicant is entitled for interest basing on Section 61 of the Sale of Goods Act.

9. Since the other citation relied upon by the Petitioner is also based on Section 61 of the Sale of Goods Act, the explanation given in the above citation is equally applicable to the ratio decided in this case as well. Therefore, this Bench makes it clear that the ratio decided in this case is not applicable to the present case. In the invoices also, it is nowhere mentioned in respect to the interest component claimed by the Petitioner.

10. Moreover, fact of the matter is that the Corporate Debtor already sent the postdated Cheques for an amount of ₹18,72,788 in relation to this claim and the same not being denied, it is still open to this Petitioner to reconcile the accounts by having a meeting in between them, because this Bench has not decided any issue in respect to the debt outstanding.

11. Therefore, the claim of interest @24% made by the Petitioner, thus, not being supported by the documents filed by the Petitioner herein, this Petition is hereby dismissed with liberty to the petitioner to proceed further, if any legal recourse is open to the Petitioner.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)