



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) / 1055 (MB) 2024

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

Shree Jajoo Instrument Manufacturing Corporation

... Operational Creditor/Applicant

Versus

Tapasya Engineering Works Private Limited

[CIN: U99999MH1986PTC038744]

... Corporate Debtor/Respondent

Order Pronounced on 15.07.2025

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Operational Creditor : Shadhabh Jain a/w Nidhi
Fagoniya, Ld. Counsel

For the Corporate Debtor : Shashwat Parihar a/w
Kartik Dabas, Ld. Counsel



Order

Brief Facts

1. This Company Petition is filed by **Shree Jajoo Instrument Manufacturing Corporation** (hereinafter referred as the “**Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) **Tapasya Engineering Works Private Limited** (hereinafter referred to as “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**Code**”) read with rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for and Operational Creditor of Rs. 1,33,55,290.42/- (Rupees One Crore Thirty-Three Lakhs Fifty – Five Thousand Two Hundred Ninety and Forty – Two Paisa only) which includes principal amount of Rs. 74,68,989/- (Rupees Seventy – Four Lakhs Sixty-Eight Thousand Nine Hundred and Eighty – Nine only) and 58,56,301.1/- (Rupees Fifty-Eight Lakhs Eighty- Six Thousand Three Hundred-One and One Paisa only) towards MSME interest. The date of default for each invoice has occurred on the expiry of 30 days from the date of each invoice.
2. The Operational Creditor is a micro enterprise duly registered under the Micro, Small and Medium Enterprise Development Act, 2006 and is engaged in the business of machine automation production and manufacturing of electricity distribution and control apparatus electrical apparatus for switching or protecting electrical circuits, having is registered office address at F/2



Laxmi Industrial Estate New Link Road Andheri West, Mumbai – 400053.

3. The Corporate Debtor is a private limited company incorporated on 24th January 1986 bearing CIN U99999MH1986PTC038744. Its registered address at A-212 Road No. 30, Wagle Industrial Estate Thane – 400604. The Corporate Debtor is engaged in the business of Pharmaceutical Machinery. The authorised share capital of the Corporate Debtor is 5,00,00,000/- and paid up share capital is Rs. 2,23,88,800/-. Therefore, this bench has jurisdiction to entertain and decide the Petition.
4. The Operational Creditor has amended the captioned Petition by filing an application under Section 60(5) of the code. This Tribunal vide order dated 13.02.2025 in IA 811 of 2025 allowed the prayer to amend the Form 5 in the Petition for modifying the default amount and rate of interest. The Corporate Debtor has filed his Affidavit in reply in the amended Petition.

Submission of the Operational Creditor:-

5. The Corporate Debtor approached the Operational Creditor for supply of machine automation products. The parties had mutually agreed that in terms of the purchase order placed by the Corporate Debtor. The Operational was to offer the machine automation products as specified in the purchase order, pursuant to which the Corporate Debtor was required to issue a letter of credit with respect to the purchase order.



6. The Corporate Debtor had placed several purchase order upon Operational Creditor with a request to supply its goods to the Corporate Debtor. The Operational Creditor had duly supplied the goods to the Corporate Debtor upon which the Operational Creditor had raised invoices for payment of the goods received. The Corporate Debtor had accepted the invoices issued by the Operational Creditor and terms which required the payment to be made by the Corporate Debtor.
7. The Corporate Debtor, in no event later than 30 days from the date of the invoice raised, was to make payment against the invoices. In case of delay, the invoice stipulated payment of interest at the rate of 24% per annum on delayed payments. The terms of the invoice also clearly specified that the Corporate Debtor will be considered to have accepted the goods if it does not notify about the damage or defects in the goods supplied within 3 days. The Corporate Debtor did not raise any such objection with respect to the goods.
8. The Operational Creditor submits that, initially the Operational Creditor received the payments against the raised invoice from time to time. The Corporate Debtor somewhere in or around December 2019 stopped making payment towards supply of goods in term of the purchase orders.
9. In accordance with Section 16 of the Micro, Small and Medium Enterprise Act, 2006 (hereinafter referred to “**MSME**”), any supplier classified as an MSME is entitled to claim interest on outstanding dues at the rate of 18% per annum. In this regard, the



Operational Creditor, being a registered MSME entity is entitled to claim interest at the rate of 18% per annum on any outstanding dues in the event of the delayed payment by the Corporate Debtor beyond the agreed credit period or the statutory period prescribed under the MSME Act.

10. The Operational Creditor has relied upon the following decisions:-

- i. **Central Bank of India V. Ravindra and Ors. (2002) 1 SCC 367.** The Hon'ble Supreme Court in this case held that the statutory interest can be levied in terms of outstanding dues between contractual parties. The relevant part is reproduced as under:-

“If there is a stipulation for the rate of interest, the court must allow that rate up to the date of the suit subject to three exceptions: (i) any Provision of law applicable to money lending transactions. or usury laws or other debt law governing the parties and having an overriding effect on 8n of interest voluntarily entered into between the parties (ii) if the rate is s penal, the court must award dt such rate as it deems reasonable; (iii) even if the rate is not penal the court may reduce.”

- ii. **Indian Highways Management Co.Ltd V. Sowil Ltd. (2021) SCC OnLine Del 5523.** The Hon'ble High Court of Delhi in this case concluded that Section 15, 16 and 17 of the MSMED Act impose the liability on the buyer to pay the due amount to the supplier within specified period and to pay interest if it fails to do so, independent of the



provisions of Section 18 of the MSMED Act. The Hon'ble Court further held that the provisions of Sections 15 and 16 of MSMED Act confer substantive rights and impose obligations which are not contingent upon recourse to any dispute resolution mechanism.

11. Despite repeated reminder and communications, the Corporate Debtor has failed to make any further payments thereof. Accordingly, the Operational Creditor issued a Demand Notice dated 29th July, 2024 under section 8 of the Code read with rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 vide email and registered post *inter alia* calling upon it to make payments within 10 days. The said Demand Notice was duly delivered upon the Corporate Debtor on 30th July, 2024. The Corporate Debtor, despite in receipt of the services from the Operational Creditor failed to clear and make payment. The Corporate Debtor did not raise any dispute to the amount due of the goods provided by the Operational Creditor. Since the Corporate Debtor till date has not responded nor has denied the aforesaid Demand Notice, hence the present petition.

Submission of the Corporate Debtor:-

12. The Corporate Debtor submits that, at the very outset the captioned Petition is not maintainable either in law or in facts. It is essentially a civil suit for recovery of money against a going concern, and is thus not maintainable before this Forum. The Corporate Debtor has relied on the judgement of Hon'ble Supreme Court in *Mobilox Innovations Private Limited Vs Kirusa*



Software Private Limited (2018) 1 SCC 353. In this case the Hon'ble Supreme Court has led down that the IBC is not intended to be substitute to a recovery forum. It is also laid down that whenever there is existence of real dispute, the IBC provision cannot be invoked. Further it is submitted that the Operational Creditor has filed the captioned Petition for the purpose of recovering amounts that are purported to be due to it by the Corporate Debtor for supply of goods in terms of alleged purchase orders including interest.

13. The alleged operational debt is disputed in both quantum and liability. There exist ongoing correspondence and disputes regarding the quality of the goods, delays and reconciliation of accounts, all amounting to pre-existing disputes under Section 8 (2)(a) of the Code. The Corporate Debtor states that the Operational Creditor not claimed MSME status, in the original Petition and attempt to invoke Section 16 of the MSMED Act, 2006 at this belated stage appears afterthought and mala fide intension to claim interest under the MSME Act.
14. The Corporate Debtor submits that, the Operational Creditor has failed to demonstrate any instance of payment of interest by the Corporate Debtor. It is submitted that the purchase order / tax invoices starting from 17.12.2019 to 13.12.2022 have been fabricated by the Operational Creditor to grossly inflate the owed amount to artificially pumped the pecuniary value of the dispute to circumvent the rigmaroles of filing a civil suit for recovery.



15. It is further submitted that the original set of documents filed by the Operational Creditor does not contain any reference to the MSMED Act, nor was any MSME registration certificate annexed. The sudden appearance of this registration and MSME claim in the amended version amounts to suppression and manipulation, making the current interest claim legally untenable. It is pertinent to note that the original claim amount Rs. 1,50,22,723.93/- was inflated with 24% interest now changed to 1,33,55,290.42/- with 18% interest. The contradictory assertions cast serious doubt on the credibility and calculation of the debt. There is no written agreement between the parties has been placed on record, to establish the specific interest terms or acceptance thereof by the Corporate Debtor. The Corporate Debtor has relied on the judgement of Principal Bench, New Delhi in *Vedic Projects Pvt. Ltd Vs. Shri Sutanu Sinha (RP) Company Appeal (AT) (Insolvency) No. 1927 of 2024* order dated 12.11.2024, wherein it was held that NCLT is not appropriate forum to consider the issue pertaining to the interest claimed by the Appellant under Section 16 of the MSMED Act. There being no clause in the Agreement to include the interest on the delayed payment, the claim could not be accepted towards interest on the operational debt, which was claimed by the Appellant. Although the MSMED Act, provides a statutory right to interest for MSME under Section 16, the tribunal clarified that such claims must be prepared before designated authorities under the Act. Insolvency forums like the NCLT are not appropriate for adjudicating these claims, marking a clear separation of forums for statutory and contractual remedies.



16. It is submitted that the amended Petition appears to be deliberate attempt to circumvent the statutory bar imposed under Section 10A of the Code which prohibits the initiation of CIRP proceeding. In the original set of documents, the alleged defaults clearly arose during this COVID-19 moratorium period. However, in the amended Petition, the Operational Creditor has selectively restricted the claim, modifying the interest calculations omitting certain default events and adjusting the date of default where the period falls outside the protection granted under Section 10A.
17. The Corporate Debtor disputes the authenticity, veracity and accuracy of the invoices raised by the Operational Creditor. The Corporate Debtor states that they have never agreed to a 18% interest rate on delayed payments. It is submitted that even in the communication which have been relied upon by the Operational Creditor the parties only agreed to an outstanding amount of Rs. 74.79 Lakhs. Further it clarifies that the Rs. 74 Lakh approximately owed to two companies i.e., Shree Jajoo Instrument Manufacturing Corporation and Jajoo Automation Private Limited. Thus, the Corporate Debtor only admitted the liability of Rs. 74 Lakh to the Operational Creditor.
18. It is evident that the Operational Creditor has intentionally clubbed the interest with the principal amount to arrive at the minimum threshold of Rs. 1 Crore for complying with the provisions of Section 4 of the Code. The Corporate Debtor has relied on the following judgements:-



- i. ***M/s Plastofab Vs Electroteknica Switchgears Pvt Ltd. CP (IB) No. 62/KB/2021.*** The Kolkata NCLT bench states that while refereeing to NCLAT decision in ***Jumbo paper Products vs. Hansraj Agrofresh Private Limited (2021) ibclaw.in 497 NCLAT*** held that in case of Operational Debts, the interest component cannot be clubbed with the Principal Debt to arrive at the minimum pecuniary threshold of Rs. 1 Crore.
- ii. ***CBRE South Asia Pvt Ltd. Vs M/s United Concepts and Solutions Pvt Ltd.*** The Hon'ble NCLT Delhi Bench held that “14. That in the light of the above discussion we are of the view that the Interest amount cannot be clubbed with the Principal amount of debt to arrive at the minimum threshold of Rs. 1 crore for complying with the provision of the Section 4 of IBC, 2016”.
- iii. ***Krishna Enterprises vs Gammon India CA (AT) (Insolvency) No. 144 of 2018.*** The Hon'ble NCLAT states that, “if for delayed payment Appellant(s) claim any interest it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer.”
- iv. ***North West Carrying Company, LLP Vs Metro Cash and Carry India Pvt Ltd CP (IB) No. 133/BB/2022 dated 25.05.2023*** after relying on the judgement in case of ***Mr. Prashat Agrawal Vs Vikash Parasrampuria (2022) ibclaw.in 509 NCLAT*** held that in order to club other charges with the



principal amount, express stipulation has to be incorporated specifically in the agreement, the purchase order, or the invoice. In the absence of the same, neither interest nor any other charges can be clubbed with principal amount.

- v. The Corporate Debtor disputes the authenticity, veracity, and accuracy of the invoices raised by the Operational Creditor. The invoices are fabricated and do not reflect the actual transactions between the parties. The Corporate Debtor has relied upon the decision given in *M/s S.S Engineers & Ors. Versus Hindustan Petroleum Corporation Ltd. Civil Appeal No. 4583 of 2022.*

Finding and Analysis: -

19. We have heard the submission of the learned Counsel for the Operational Creditor and Corporate Debtor. Perused the record.
20. This is a petition filed under **Section 9 of the Insolvency and Bankruptcy Code, 2016** (hereinafter “the Code”) by the Operational Creditor seeking initiation of the **Corporate Insolvency Resolution Process (CIRP)** against Corporate Debtor for alleged default of Rs. 1,33,55,290.42/- (Rupees One Crore Thirty-Three Lakhs Fifty – Five Thousand Two Hundred Ninety and Forty – Two Paisa only).
21. We will deal with issues arising for consideration in the following paragraphs :



22. Whether the **minimum default threshold** under Section 4 of the Code is satisfied? In this case, the captioned Petition has been filed for a principal sum of Rs. Rs. 74,68,989/- (Rupees Seventy – Four Lakhs Sixty-Eight Thousand Nine Hundred and Eighty – Nine only) outstanding as on date of filing of present petition and an interest at the rate of 18% under MSME amounting to Rs. 58,56,301.1/- (Rupees Fifty-Eight Lakhs Eighty- Six Thousand Three Hundred-One and One Paisa only). The Operational Creditor has claimed the interest on the ground that the invoices issued upon the Corporate Debtor clearly contemplate payment of interest vide the tax invoices raised. In the case of ***Rishabh Infra v. Sadbhav Engineering Ltd. (2024) ibclaw.in 707 NCLAT***, it was held that “9. *We are of the view that invoices which have been sent by the Operational Creditor containing the term of interest cannot be operated against the Corporate Debtor unless there is an agreement for interest or any other document showing that the Corporate Debtor has accepted the obligation for interest.*” The decision in *Rishabh Infra* is later to decision in *Prashant Agarwal (Supra)*, hence, we consider it appropriate to follow it.
23. As regards claim of interest under MSMED Act, the Hon’ble NCLAT in the case of ***SNJ Synthetics Ltd. vs. Pepsico India Holdings Pvt. Ltd. Company Appeal (AT) (Ins) No. 386 of 2025***, held that “17. *The preambular objective of the IBC being insolvency resolution has been oft emphasized by the Hon'ble Supreme Court in a catena of judgements. The provisions of IBC cannot be turned into a debt recovery proceeding. Hence, the Adjudicating Authority has not committed any infirmity in not allowing the CIRP of the Corporate Debtor to be initiated solely on the basis of the claim of the contested and*



unsubstantiated interest component. The provisions of IBC Company Appeal (AT) (Ins) No. 386 of 2025 cannot be turned into a debt-recovery proceedings and to commend any such course of action would tantamount to pushing the Corporate Debtor to face the perils of corporate death instead of being rejuvenated and revived. We also notice that the Appellant has relied on the provisions of other laws like MSME Act or Interest Act to justify their claim of interest payment. Without making any observation on the merits of their contention, we would only like to add that neither the Adjudicating Authority nor this Appellate Tribunal is the appropriate forum for making any such determination on the liability of the Respondent- Corporate Debtor to pay interest under the MSME Act or Interest Act.”

24. Following the decision of Hon’ble NCLAT, we are of considered view that the claim of interest under MSMED Act can not be adjudicated by this Tribunal and accordingly, can not be taken into consideration for determination of total amount in default.
25. Since the amount of debt claimed in the Petition de hors interest is less than Rs. 1 crore as on date of filing of the petition, this petition is not maintainable in view of threshold limit provided in Section 4 of the Code.
26. In view of the foregoing, we are of considered view that the present Petition deserves to be **dismissed/rejected**.

FINAL ORDER

27. In view of above, the Petition bearing **CP (IB) 1055/MB/2024** filed by **Shree Jojoo Instrument Manufacturing Corporation**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – 1

CP(IB) NO.1055(MB)2024

Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Tapasya Engineering Works Private Limited** [CIN: U99999MH1986PTC038744], the Corporate Debtor, is dismissed.

Sd/-

Prabhat Kumar

Member (Technical)

Drupa

Sd/-

Justice V. G. Bisht

Member (Judicial)