

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I), CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.157/Chd/Hry/2021

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

IN THE MATTER OF:

M/s SNJ Synthetics Limited,

through its authorized person Mr. Sanjay Jalan
having its Corporate Office at Factory & Admin Office:
149, Sri Venkateswara Co-operative Industrial Estate,
Bollaram Village (Patancheru Mandal),
District Sangareddy-502 325

.....Operational Creditor

Versus

M/s PepsiCo India Holdings Private Limited,

having its registered office at
Level 3-6, Pioneer Square, Sector 62,
Near Golf Course Extension Road,
Gurugram-122101 Haryana, India

..... Corporate Debtor

Judgment delivered on: 02.01.2025

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Umesh Kumar Shukla, Member (Technical)**

For the Operational Creditor: Mr. Vinay Kumar Pandey, Mr. Sanjeev Kaushik, Mr.
Divyanshu Kaushik, Advocates

For the Corporate Debtor : Ms. Munisha Gandhi, Senior Counsel with Mr. Manish
Jha, Mr. Abhishek Grover, Ms. Salina Chalana,
Advocates

**Per: Harnam Singh Thakur, Member (Judicial)
Umesh Kumar Shukla, Member (Technical)**

JUDGMENT

The present Petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**” or “**Code**”), by **M/s SNJ Synthetics Limited** (hereinafter referred to as the “**Operational Creditor**” or “**Petitioner**”), through its authorised representative Mr. Sanjay Jalan, Director with a prayer to initiate Corporate Insolvency Resolution Process (hereinafter referred to as the “**CIRP**”) in case of **M/s PepsiCo India Holdings Private Limited** (hereinafter referred to as the “**Corporate Debtor**” or “**Respondent**”).

2. The Corporate Debtor is a Company incorporated on 28.01.1994 under the provisions of the Companies Act, 1956 with CIN No. U21014TG1998FLC029285 with its registered office at Level 3-6, Pioneer Square, Sector 62, Near Golf Course Extension Road, Gurugram-122101, Haryana. Hence, the territorial jurisdiction lies with this Adjudicating Authority. The copy of the Master Data of the Corporate Debtor is attached with the main petition at Pages 1570-1572.

FACTS OF THE CASE

3. The brief facts, as stated in the Petition, are that:

- (i) The Operational Creditor is into business of PET Preform manufacturing. The Operational Creditor and Corporate Debtor entered into supply agreement, wherein the Operational Creditor was to manufacture performs to be supplied to the Corporate Debtor, for the production of PET bottles for bottled carbonated soft drink, non-carbonated beverages and/or bottled water products for their respective buyer's location etc.
- (ii) From time to time, the Corporate Debtor has been confirming the balance outstanding in the accounts of the Operational Creditor. Accordingly, the authorised signatory of the Corporate Debtor confirmed the balance and

signed in confirmation of the amount due on 31.03.2018 at Rs.1,66,66,825/- vide reconciliation sign off dated 12.06.2018. The balance sum remains unpaid in spite of several requests and demands to the Corporate Debtor.

- (iii) The Corporate Debtor has transferred the business to Varun Beverages Limited (hereinafter referred to as the “**VBL**”) under a Business Transfer Agreement (hereinafter referred to as the “**BTA**”) dated 18.02.2019 and communicated Deed of Novation dated 30.03.2019 to the Operational Creditor, where under it is mentioned that with effect from April 2019, which is anticipated as the closing date as per BTA, the Operational Creditor releases and discharges Corporate Debtor from its obligations and liabilities under the agreement and that the Operational Creditor shall continue to discharge its obligations and liabilities in favour of VBL under the agreement for the balance of the term of the agreement.
- (iv) The supplies made prior to the closing date as informed in Deed of Novation and the balance amount outstanding in the ledger as on 31.03.2018 and confirmed by the Corporate Debtor on 12.06.2018 remain unpaid even though supplies were continued and certain payments were received, whereas the last payment made by Corporate Debtor on 15.02.2021 at Rs.1,71,100/-.
- (v) The Operational Creditor has periodically sent invoices from 12.06.2018, and repeated requests to the Corporate Debtor for payment of the outstanding amount. The debt has accumulated is to the tune of Rs.1,96,80,953/- as on 28.02.2021 and in spite of repeated requests,

demands and personal visits, the officials of Corporate Debtor have refused to pay the due amount.

- (vi) Accordingly, the Demand Notice in Form 3, as attached at Annexure-A9 with the Petition, have been issued by the Operational Creditor on 13.03.2021 by enclosing the copy of the invoices along with statements, demanding payment under those invoices, which was acknowledged by the Corporate Debtor, but did not give the reply.
- (vii) In Form 5, Part IV that the amount claimed to be in default is Rs.1,96,80,953/- Principal amount plus interest @ 24% per annum from the date of filing of the present petition till the date of realisation.
- (viii) The copy of agreement (Annexure A2), Statement of account from 01.04.2018 to 28.02.2021 (Annexure A3), novation deed (Annexure A5), statement of account (Annexure A6, A8), job work invoices for period 01.04.2018 to 28.02.2021 (Annexure A7), are attached with the Main Petition.

4. In the hearing dated 04.10.2021, it was observed that the Petitioner has failed to mention the date of default in Part IV Column 2 and not filed the acknowledgment of receipt of the demand notice. The Petitioner was granted two weeks' time for removal of defect.

5. In compliance of the above Order, the Petitioner filed affidavit vide Dairy No. 00713/2 dated 09.12.2021, which was taken on record vide this Tribunal Order dated 01.01.2022. It is stated in the affidavit that the date of default in Part IV Column 2 should be read and taken as 12.06.2018 based on the reconciliation sign dated 12.06.2018 annexed at Annexure A-5 of the Main Petition and the demand notice

was sent to the Corporate Debtor vide registered post on 13.03.2021 with consignment no. RN017119208IN through India Post, which was delivered on 17.03.2021 as per the tracking report annexed with the affidavit.

6. In the hearing dated 01.01.2022, the Petitioner was also directed to issue the notice of the Petition to the Respondent, for which the affidavit of service was filed vide Diary Nos. 00713/3 dated 14.02.2022, which was taken on record vide this Tribunal Order dated 26.04.2022.

REPLY OF THE CORPORATE DEBTOR

7. The reply was filed by the Corporate Debtor vide Dairy No. 00713/5 dated 02.05.2022, which was taken on record vide this Tribunal Order dated 11.07.2022. wherein it is stated that:

- (i) The amount of purported debt is below the threshold limit for initiation of proceedings under the IBC, as the outstanding demand is less than one crore rupees. The Petitioner has claimed the outstanding amount, which comprises total outstanding principal amount of Rs.91,63,886/- and the interest calculated @ 24% per annum amounting to Rs.1,05,17,067/-. The Operational Creditor has added the interest to the alleged outstanding in order to meet the minimum threshold under the Code which is not permissible in law. The reliance has been placed on the judgements of NCLT in the matters of ***M/s. Wanbury Limited v. M/s Panacea Biotech Limited, 2017 SCC OnLine NCLT 475 and CBRE South India Private Limited v. M/s. United Concepts and Solutions Private Limited C.P. No.(IB)-797(ND) of 2021.***

- (ii) The Operational Creditor has calculated the interest @ 24% per annum from the period 01.04.2018 to 28.02.2021. There is no contractual rate of interest that was agreed between the parties. Therefore, the operational creditor has no basis for charging the interest. The reliance has been placed on the judgements of NCLT in the matters of **Swastik Eneterprises v. Gammon India Limited 2018 SCC Online NCLT 9730** and **Umesh Saraf v. Tech India Engineers (P) Ltd., 2030 SC Online NCLT 677**.
- (iii) The Operational Creditor issued the demand notice and due to restrictions and lockdowns in place on account of COVID-19 pandemic, the office of the Corporate Debtor was closed and all employees were working from home. As a result, the Corporate Debtor did not receive the demand notice and was unable to respond to the same. The operational creditor has placed on record no document to show that the demand notice was served upon the Corporate Debtor through electronic means.

8. It is recorded vide Order dated 20.04.2023 of this Adjudicating Authority, the Ld. counsels for the parties admitted that the principal amount has been paid, but the interest component is not paid by the Corporate Debtor and Ld. Counsel for the Petitioner was directed to file the calculation sheet in detail regarding the total amount of the interest component. The interest to be paid until 28.07.2023 has been submitted in the IA No.1643/2023 filed vide Dairy No. 02445 dated 26.07.2023, which was taken on record vide this Tribunal Order dated 01.04.2023 and accordingly IA No. 1643/2023 was disposed of and was tagged with the Main Petition CP (IB) No. 157/Chd/Hry/2021 for reference purposes. In the interest calculation sheet, the interest has been worked out @ 24% p.a. and total interest outstanding up to 08.02.2023 is Rs.1,31,72,920/-, up to 25.05.2023 is Rs.1,40,91,054/- (after adding

the interest Rs.918,134 from 09.02.2023 to 25.05.2023) and 28.07.2023 is Rs.1,46,45,400/- (after adding the interest of Rs.5,54,345/- from 26.05.2023 to 28.07.2023).

9. During the course of the arguments in the hearing dated 01.04.2024, Ld. counsel for the Petitioner was directed to file the Statement showing invoices post-execution of the agreement, which are more than one crore and Reconciliation statement entered by both parties or signed by both the parties indicating the amount agreed to be paid, if any. In compliance of the above order, the Petitioner filed IA No.1123/2024 to place on record the statement of invoices from 11.10.2018 onwards till 02.06.2020 reconciliation statement as on 31.03.2018, which were taken on record subject to just exceptions vide this Tribunal Order dated 01.04.2023 and IA No.1123/2024 was disposed of and was tagged with the main CP(IB) No. 157/Chd/Hry/2021 for reference purpose.

10. In the hearing dated 03.10.2024, the Respondent was directed to place on record the copy of the signed agreement dated 09.10.2018 with a copy in advance to the counsel opposite and the Petitioner was directed to file the compendium of judgments if any, within one week with a copy in advance to the counsel opposite. The respondent has placed on record the supply agreement signed by both parties vide Dairy No.00713/10 dated 29.10.2024. However, the compendium of judgments has not been submitted by the Petitioner till the date of issue of this Order.

SHORT WRITTEN SUBMISSION BY PETITIONER

11. The short written submissions have been filed by the Petitioner vide Dairy No.00713/7 dated 14.09.2023 (which were taken on record vide this Tribunal Order dated 05.10.2023), wherein it is stated that:

- (i) The principal amount has already been paid by the Corporate Debtor during the pendency of the present petition before this Tribunal. Now, the issue remains as to whether the Corporate Debtor is liable to pay the interest.
- (ii) Since the invoices are the covenants attached to the original agreement therefore no distinction can be drawn with the agreement and the invoices for the purposes of determining the liability of the Corporate Debtor. Since the invoices and its terms and conditions are well within the knowledge of the Corporate Debtor and except the objection which has been raised before this Tribunal in the present petition, the Corporate Debtor had not even hesitated the terms and conditions of the invoices till date.
- (iii) The argument of the counsel for the Corporate Debtor that there are judgments of the National Company Law Tribunal and its Regional Benches to the effect that the debt will not include any interest i.e. part and parcel of the invoices raised by the Operational Creditor, the controversy has been put to rest by the Hon'ble National Company Law Appellate Tribunal in the case of ***Prashant Aggarwal Vs. Vikas Parasrampuria and Another, Company Appeal (AT) (Ins) No. 690 of 2022*** wherein it is stated that the interest component was mentioned in the invoices then the same can be made part and parcel of the operational debt and it shall be the liability of the Corporate Debtor.
- (iv) The reliance is placed in the case of ***Vidarbha Industries Power Limited Vs. Axis Bank Limited (2022) 8 SCC 352***, wherein it was held that when a Petition under Section 9 is filed under IBC, it is mandatory to admit such petition as per scheme of the Code.

- (v) The reliance placed by the Corporate Debtor upon the judgement in the case of *M/s Wanbury Ltd. Vs. M/s Panacea Biotech Ltd., RT No. 9/Chd/Pb/2017* wherein it is stated that interest component do not become the debt of the Corporate Debtor. The said judgment is not applicable to the present case, as in the said case, the interest component was not even mentioned in the invoices, when binding of the petition was filed before the Hon'ble High Court, thereafter tax invoices were filed before the Tribunal, when binding of the petition was transferred to this Tribunal. While in this case, tax invoices were and that contain clause of payment of 24% interest.
- (vi) The invoices have been issued in pursuance to the agreement and cannot be said to be a unilateral contract. Prior to the filing of the present Petition, the Corporate Debtor never objected to the invoices. In fact, the said invoices are admitted by the Corporate Debtor as the principal amount has been paid.
- (vii) The Petition was filed for recovery of operational debt and merely because the principal amount has been paid during the pendency of the present application, the Petition itself does not become a petition of recovery for the interest component. In fact, the petitioner has reserved its rights while accepting the principal amount that it shall not prejudice the claim of the petitioner qua the interest component.

SHORT WRITTEN SUBMISSION BY RESPONDENT

12. The Corporate Debtor filed short written submissions vide Dairy No.00713/8 and compendium of judgments vide Diary No.00713/9, both dated 04.10.2023 (which

were taken on record vide this Tribunal Order dated 05.10.2023), wherein it is stated that:

- (i) The total amount of debt was Rs.1,96,80,953/- comprising of Principal amount of Rs.91,63,886/- and Interest calculated at the rate of 24% per annum of Rs.1,05,17,067/-. In order to meet the threshold of Rs.1,00,00,000/- under Section 9 of the Code, the Operational Creditor has artificially inflated the purported claim amount by adding interest @ 24% per annum basis unilateral and unsigned invoices. After the filing of the Application, the parties reconciled their accounts and Corporate Debtor paid Rs.77,73,886 (hereinafter referred to as the “**Reconciled Amount**”) on 10.02.2023. Despite payment of the Reconciled Amount, the Operational Creditor continues to pursue the Application only for recovery of the purported interest @ 24% per annum, which is not maintainable.
- (ii) The liability towards payment of interest is disputed by the Corporate Debtor and therefore, cannot become the basis of the application under Section 9.
- (iii) The Petition solely for recovery of interest is not maintainable and interest on delayed payment, if any, must be decided by competent civil court. The question of the whether a liability has arisen and the quantum to be paid must first be determined by a Court of competent jurisdiction. The reliance has been placed on the following judgements:
 - (a) Hon'ble NCLAT in the matter of **SBF Pharma v. Gujarat Liqui Pharmacaps Private Limited, 2019 SCC OnLine NCLAT 1440** has observed that It is well established law that if an Operational Creditor

continues to pursue the Section 9 Application only for the realisation of interest amount, it is against the principles of the Code and should be treated as an application pursued by the OC for malicious intent

- (b) Hon'ble NCLAT in the case of ***Permali Wallace Private Limited v. Narbada Forest Industries Private Limited Company Appeal (AT)(Ins.) No. 36 of 2023*** has held that the Code is not a recovery proceeding, and an application, which has been filed only for the recovery of the balance amount of interest, is not an application for resolution of any insolvency of the Corporate Debtor.
- (c) Hon'ble NCLAT in the case of ***Amsons Communications Private Limited v. ATS Estates Private Limited Company Appeal (AT) (Ins.) No. 540 of 2020*** has held that an application under Section 9 of the Code cannot be converted into proceedings for recovery of interest on delayed payment as that is not the object of the Code.
- (d) Hon'ble NCLAT in the case of ***Krishna Enterprises v. Gammon India Limited 2018 SCC OnLine NCLAT 360*** has dismissed an application under Section 9, where no interest was payable under the terms of the agreement, while holding that if there was a claim for delayed payments, it is open for the party to move such claim before a court of competent jurisdiction and initiation of corporate insolvency resolution process is not the answer.
- (iv) The interest cannot be charged basis invoices as invoices are unilateral contracts, raised without the consent or agreement of the Corporate Debtor. The Operational creditor's reliance on the invoices as the basis for

claiming interest is frivolous as the clause 9 of the Agreement is silent with respect to any liability towards payment of interest on delayed payments. The reliance is placed on the case of ***Oswal Cable Products v. Jindal Speciality Textiles Limited 2023 SCC Online NCLT 179***, while dealing with similar facts, this Tribunal relying on the case of ***S.S. Polymers v. Kanodia Technoplast Limited Company Appeal (AT) (Ins.) No. 1227 of 2019*** has held that 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.

- (v) As per clause 19 of the Agreement, the agreement has not been amended for the addition of any provision with respect to charging of interest. The Agreement provides that any amendment to the Agreement must be in writing, signed by the authorised representative of both parties and must state that such written contract intends to amend the Agreement. In the absence of any agreement to pay interest on delayed payments, charging of interest is a unilateral act which cannot be sustained.
- (vi) Further, in the present case, the invoices produced by the Operational Creditor have neither been countersigned by the Corporate Debtor nor has the Corporate Debtor at any time in the past made payments for any interest component. Therefore, it cannot be said that the Corporate Debtor has agreed to make any payments of interest on delayed payments.
- (vii) An application against a solvent Corporate Debtor pursued only for the recovery of interest is a malicious proceeding. Once the Reconciled Amount has been entirely paid, the issue is only regarding the Interest

Claimed, for which the application under Section 9 of the Code is not maintainable as the spirit of the legislation is for 'resolution of debt' and not 'recovery'. The reliance is placed on the Hon'ble NCLAT judgement in the case of ***Rohit Motawar v. Madhu Sharma Comp. Appeal (AT)(Ins.) No. 1152 of 2022.***

- (viii) The initial claim of the Operational Creditor included the claimed principal of Rs.91,63,886/-, which after reconciliation was reduced Rs.77,73,886/-. The Hon'ble NCLAT in the matter of ***Amit Wadhvani v. Global Advertisers & Anr., Company Appeal (AT) (Ins) No. 616 of 2021*** has held that the very fact that a reconciliation was agreed to by the Operational Creditor and the amount was accordingly reduced shows the existence of a dispute in relation to the purported debt, as claimed by the Operational Creditor.
- (ix) The very fact that the reconciled amount is less than the claimed principal is evidence of the fact that the Operational Creditor has tried to artificially inflate the claim in order to extort money from the Corporate Debtor by threatening initiation of insolvency proceedings. Even after undertaking the reconciliation in July 2022 and receiving payment of the money on 10.02.2023, the Operational Creditor has made no effort to amend the Application in order to bring such facts to the notice of this Tribunal. The Hon'ble NCLAT in ***Starlog Enterprises Limited v. ICICI Bank Limited 2017 SCC OnLine NCLAT 13*** has held that showing an incorrect claim, moving the Adjudicating Authority in a hasty manner and attempting to get an incorrect claim admitted are all proof of the malicious intentions of the Operational Creditor.

- (x) Similarly, at the time of filing of the Application, the Operational Creditor failed to mention any date of default in the Application. Upon directions of this Tribunal, the OC filed an affidavit stating that the date of default is 12.06.2018. However, the invoices relied upon by the Operational Creditor have all become allegedly due after the date of default, which further shows the Operational Creditor's mala fide in filing the present Application.
- (xi) The Operational Creditor's reliance upon the judgement in Prashat Agarwal is misplaced as the same is easily distinguishable from the facts of the present case, as there is no agreement as to payment of interest component and the invoices under question are not signed.

ANALYSIS AND FINDINGS

13. We have heard the learned counsels for the parties and have perused the records.

14. The only issue for consideration is ***“Whether after payment of principal amount through settlement during the pendency of the petition, the Petition is maintainable for the balance interest amount”***.

- (i) Section 9(5)(i)(b) of the Code provides that the Adjudicating Authority shall admit the application if there is no payment of the unpaid operational debt and reject the application if there has been payment of the unpaid operational debt. In the present case, **the principal amount has been paid during the pendency of the Petition, therefore requirement of Section 9(5)(i)(b) are not complied with.**

- (ii) The Part IV of Form 5 annexed with the Petition filed by the Operational Creditor shows total amount of Debt as Rs.1,96,80,953/- as on 28.02.2021 as below:

AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE OF DEFAULT ON WHICH THE DEFAULT OCCURED	Total Amount of Debt : Default of Rs. 1,96,80,953 (Rupees One Crore Ninety Six Lakhs Eighty thousand Nine Hundred and Fifty Three only) + interest at 24% per annum from the date filing of the present petition till the date of realization.
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It may be seen that Part IV of Form 5 of the Petition does not show the break-up of amount claimed into principal amount and interest, although there are mention in other places in the Petition that it comprises of Principal amount of Rs.91,63,886/- and Interest calculated at the rate of 24% per annum of Rs.1,05,17,067/-, which is also shown in the Demand Notice dated 13.03.2021 issued by the Operational Creditor to the Corporate Debtor as below:

PARTICULARS OF OPERATIONAL DEBT		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH SUCH DEBT FELL DUE	1. Total Debt as on 28.02.2021= Rs. 1,96,80,953/- Principal outstanding = 91,63,886 Interest outstanding= 1,05,17,067 Total outstanding as on 28.02.2021= 1,96,80,953

We also observe that during the pendency of the Petition, the parties have settled on 10.02.2023 the amount of Principal outstanding as on 28.02.2021 with the Reconciled Amount of Rs.77,73,886/- and the Petitioner has submitted that his claim now is for the outstanding interest

amount of Rs.1,05,17,067/-. The Petitioner has neither submitted the copy of the settlement agreement with the Corporate Debtor for arriving at the Reconciled amount nor the reasoning for his claim of the same interest amount even after reduction of the claim amount of the outstanding principal amount. The Applicant had submitted the documents vide IA No.1123/2024 but those are not sufficient to work out the revised interest amount based on the reduced reconciled amount in comparison to the original principal amount.

We note that the Reconciled Amount of Rs.77,73,886/- is only 84.83% of Rs.91,63,886/-, which is the principal amount claimed in the Petition and if the same ratio is applied presuming the proportional reduction of each of the principal amount due from the Corporate Debtor, the interest amount works out to Rs.89,21813/-, which would be below the threshold amount of Rs. one crore and thus the petition may not be maintainable for the interest amount.

- (iii) The Supply Agreement dated 09.10.2018 annexed with the Petition at Annexure did not have the signature of both the parties (has signature only of the Operational Creditor). Therefore, in the hearing dated 03.10.2024, the Respondent was directed to place on record the copy of the signed agreement dated 09.10.2018, which was filed by the Respondent vide Dairy No.00713/10 dated 29.10.2024. The clause relating to payment terms of the Supply Agreement is reproduced below:

9. PAYMENT TERMS

9.1 Seller shall issue Tax Invoice properly capturing all the relevant information and details as required under the GST law and rules/formats framed there under. The respective parties would be liable to pay GST, as applicable to the Government under the GST laws.

9.2 Notwithstanding anything contained in the agreement, both parties agree that in the event PIH is not able to avail Input Tax Credit due to reasons attributable to the Seller, PIH may hold the payment or debit an amount to the extent of input tax credit disallowed to PIH until the PIH actually avails Input Tax Credit.

9.3 Payment terms will be net no. of days as specified in price note in SCHEDULE " D" i.e. 30 days from the later of the invoice received date or the date that the product is received at the Buyer's plant. If the payment due date falls on a Saturday, Sunday or holiday, the payment due date will be the next business day following such Saturday, Sunday or holiday. Payment will be deemed made if by electronic funds transfer ("EFT"), upon evidence of actual transfer to the Seller Account, Seller will issue an invoice, transport documents to the Buyer on the basis of the scheduled delivery.

Schedule D

Contract Prices and Payment terms

Prices as per the price note duly signed in Dec 2017.



The Payment terms for soft tolling under new vendor remains as 30 days from the date of receipt of invoice.

The additional cost for doing soft tolling with PepsiCo India is Rs. 2.25 Rs / KG, by adding 1% wastage in addition to the purchase price of the resin.

Pricing will be can be mutually revised after Dec 2018.

It is noted that there is no mention of the interest in the supply agreement and the Operational Creditor is claiming the interest thereon on the basis of the invoices. However, it may be noted that the invoices attached with the Petition by the Operational Creditor are for the period after 31.03.2018. The Corporate Debtor confirmed the balance and signed the confirmation of the amount due on 31.03.2018 at Rs.1,66,66,825/- vide reconciliation sign off dated 12.06.2018 (Attached as Annexure A-4 of the petition). However, no invoice has been attached for the period prior to 31.03.2018 to show that the interest to be charged has been mentioned on the invoices.

- (iv) In the present case, the principal amount stands paid, therefore the CIRP cannot be initiated solely on the basis of the claim of interest component. In this regard, reliance can be placed on the judgment involving the same issues passed by Hon'ble NCLAT in the case of ***Rohit Motawat Vs. Madhu Sharma Proprietor Hind Chem Corporation & Anr. Comp. App. (AT) (Ins) No. 1152 of 2022 dated 03.02.2023*** wherein it has been held that:

“10. We have heard counsel for the parties and after perusal of record, are of the considered opinion that the impugned order is patently illegal and deserve to be set aside. The question which has been raised by the Appellant is hereby answered in favour of the Appellant in view of the decision taken by this Court in the case of ‘S.S. Polymers’ (Supra), ‘Permali Wallace Pvt. Ltd.’ (Supra) as well as the decision of the ‘Hon’ble Karnataka High Court’ in the case of ‘Jyothi Limited’ (Supra). Before parting, we are constrained to observe that the Adjudicating Authority has erred in not looking into the facts that the principal amount has entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable as the spirit of the legislation of the Code is for ‘resolution of debt’ and not for ‘recovery’.”

(Emphasis Supplied)

- (v) And in the case of ***M/s Oswal Cable Products vs. M/s. Jindal Speciality Textiles Limited, CP (IB) No. 186/Chd/Pb/2019*** and ***CP (IB) No. 187/Chd/Pb/2019***, decided by this Bench, based on similar facts, dismissed the applications where the principal amount was paid by the corporate debtor, only interest component was disputed. Further, there was no agreement on the interest component, and the invoices were not signed. Thus, no interest is due and payable to the operational creditor.
- (vi) The Judgment in the case of ***Prashant Agarwal (Supra)*** as relied upon by the petitioner is not applicable to the facts of the case as neither there is any agreement to the interest component nor invoices for the relevant period are placed on record. Further, the judgment in the case of ***Vidarbha***

Industries Power Limited (supra) relied upon by the operational creditor is also not applicable as in the said judgment itself the court has held that the conditions stipulated under Section 9(5) should be complied with for initiation of the CIRP proceedings.

15. As a sequel to the aforesaid discussion, CP (IB) No.157/Chd/Pb/2021 stands **dismissed and disposed** of accordingly, however without any costs.

Sd/-
(Umesh Kumar Shukla)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

January 02, 2025
Tamanna



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE