

May 2025

## Interest claimed without agreement cannot be included in operational debt

On April 16, 2025, a 3 (three) judge bench of the National Company Law Appellate Tribunal, New Delhi (“NCLAT”) in *Shitanshu Bipin Vora vs. Shree Hari Yarns Pvt. Ltd. & Anr.*<sup>1</sup> held that clauses of unilateral interest in invoices without a formal agreement, cannot inflate claims of operational debt to meet the threshold of INR 1,00,00,000 (Indian Rupees one crore) under Section 4 of the Insolvency and Bankruptcy Code, 2016 (“IBC”). The NCLAT set aside the order dated September 5, 2024, passed by the National Company Law Tribunal, Mumbai (“NCLT”) wherein it initiated Corporate Insolvency Resolution Proceedings (“CIRP”) against the corporate debtor – Exclusive Linen Fabrics Private Limited, emphasising the statutory distinction between operational debt and financial debt and the necessity of explicit contractual terms for interest claims (“**Impugned Order**”).

### Brief facts

1. The dispute arose on the basis of a claim of operational debt amounting to INR 1,29,08,449 (Indian Rupees one crore twenty-nine lakh eight thousand four hundred and forty-nine) by respondent No. 1 i.e. Shree Hari Yarns Private Limited. The claim comprised of the principal amount i.e. INR 88,16,301 (Indian Rupees eighty-eight lakh sixteen thousand three hundred and one) and interest amount i.e. INR 40,92,148 (Indian Rupees forty lakh ninety-two thousand one hundred and forty-eight).
2. The appellant contested the interest component, arguing that no formal agreement existed for interest on delayed payments, and the principal alone fell below the threshold of INR 1,00,00,000 (Indian Rupees one crore) for initiation of CIRP.
3. The appellant also contended that the date of default mentioned in the additional affidavit is incorrect, as it does not consider a payment made on June 2, 2021.
4. The appellant further stated that the respondents failed to substantiate how the default date was determined and the NCLT overlooked these deficiencies while passing the Impugned Order.
5. Accordingly, the appellant filed the appeal before the NCLAT, challenging the initiation of CIRP on the grounds of maintainability, procedural irregularities, and violation of natural justice.
6. Furthermore, as an interim measure, the corporate debtor deposited the principal amount of INR 88,16,301 (Indian Rupees eighty-eight lakh sixteen thousand three hundred and one) with the NCLAT.

<sup>1</sup> Company Appeal (AT) (Insolvency) No. 2204 of 2024

## Key issues

1. Whether unilateral interest clauses in invoices, without a formal agreement, constitute 'operational debt' under Section 5(21) of the IBC?
2. Whether disputed interest can be included to meet the threshold of INR 1,00,00,000 (Indian Rupees one crore) under Section 4 of the IBC?
3. Whether quality-related disagreements and cash discounts indicated a pre-existing dispute?

## Findings and analysis

1. The NCLAT emphasised that operational debt under Section 5(21) of the IBC, unlike financial debt (Section 5(8) of the IBC), does not inherently include interest unless contractually agreed between the parties. The vague reference in the invoices "18% interest on delayed payment" clause lacked specificity and was unilaterally imposed. Past payments of interest were insufficient to establish mutual consent, as no documentary evidence proved the corporate debtor's acknowledgment of liability.
2. Excluding the disputed interest amount of INR 40,92,148 (Indian Rupees forty lakh ninety-two thousand one hundred and forty-eight), the principal amount of INR 88,16,301 (Indian Rupees eighty-eight lakh sixteen thousand three hundred and one) fell short of the threshold amount of INR 1,00,00,000 (Indian Rupees one crore). The NCLAT reiterated that inflated unsubstantiated interest claims cannot be used to invoke the jurisdiction under Section 4 of the IBC.<sup>2</sup>
3. Quality-related disputes and cash discounts offered by the operational creditor indicated pre-existing disputes, thereby rendering the application under Section 9 of the IBC as inadmissible. The NCLAT re-affirms that the IBC is a resolution tool and not a recovery mechanism.

## Conclusion

1. Operational creditors must establish unambiguous contractual agreements to claim interest as part of operational debt under Section 5(21) of the IBC. The NCLAT emphasised that unlike financial debt under Section 5(8) of the IBC, which expressly includes interest, operational debt is strictly confined to claims arising from goods, services or statutory dues. Absent a mutual and explicit agreement, unilateral interest clauses in invoices do not create enforceable obligations. The NCLAT rejected the Operational Creditor's reliance on past payments and held them to be insufficient to infer consent, stressing that sporadic payments without documented acknowledgment cannot substitute a formal contract. This aligns with precedents like *SS Polymers vs. Kanodia Technoplast*<sup>3</sup> and *Krishna Enterprises vs. Gammon India*<sup>4</sup>, wherein the NCLAT barred interest claims lacking bilateral agreements.
2. The courts must rigorously exclude disputed or unsubstantiated interest components when assessing whether operational debt meets the threshold amount of INR 1,00,00,000 (Indian Rupees one crore) under Section 4 of the IBC. The NCLAT cautioned against permitting creditors to "invoke jurisdiction of the NCLT" through inflated interest claims, reaffirming that artificial inflation undermines the IBC's procedural integrity.
3. The NCLAT reiterated that initiating CIRP solely for debt recovery contravenes the foundational objectives of the IBC. Relying on *Mobilox Innovations vs. Kirusa Software*<sup>5</sup> (2018) and *Swiss Ribbons vs. Union of India*<sup>6</sup>, the NCLAT emphasised that the IBC prioritises maximising the assets of the corporate debtor over coercive recovery.

<sup>2</sup> Company Appeal (AT) (Insolvency) No. 1227 of 2019

<sup>3</sup> *Ibid*

<sup>4</sup> 2019 SCC OnLine 1310

<sup>5</sup> 2018 (1) SCC 353

<sup>6</sup> (2019) 4 SCC 17

4. Initiating CIRP for recovery undermines the intent of the IBC. The judgment reinforces IBC's intent on resolving insolvency and not adjudicating disputed claims.
5. The judgment reinforces the IBC's resolution-centric ethos, mandating strict adherence to contractual formalities and vigilance against jurisdictional overreach.
6. By invalidating unilateral interest claims and curbing procedural misuse, the NCLAT ensures that operational creditors pursue legitimate insolvency resolution rather than adversarial recoveries.

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