CP (IB) NO. 304/KB OF 2024

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**DIVISION BENCH, COURT NO. II**

**KOLKATA**

**I.A. (IB) NO. 111/KB OF 2025**

**And**

**CP (IB) NO. 304/KB OF 2024**

***An Application 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:**

K L STEELS (P) LTD.
502, Fifth Floor,
Salcon Rasvillas,
Saket, New Delhi-110017
EMAIL: gm.fm@klsons.in

...Operational Creditor

Versus

BRIDGE AND ROOF CO. (INDIA) LIMIMTED
4th & 5th Floor, Kankaria Centre
211 Russel Street,
Kolkata, West Bengal
India-700071
EMAIL: brige@bridgeroof.co.in;
rakhee.kar@bridgeroof.co.in

...Corporate Debtor

And

**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**DIVISION BENCH, COURT NO. II**
**KOLKATA**

**CP (IB) NO. 304/KB OF 2024**

***An Application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, Rule 11 of the National Company Law Tribunal Rules, 2016.***

**IN THE MATTER OF:**

**BRIDGE AND ROOF CO. (INDIA) LTD.**

... Applicant

VERSUS

**K L STEELS (P) LTD.**

...Respondent

**Date of Pronouncement:08.05.2026**

**CORAM: Labh Singh, Hon'ble Member(Judicial)**
**Rekha Kantilal Shah, Hon'ble Member(Technical)**

Present:

Mr. Milan Singh Negi, Adv. ] For the Operational Creditor
Mr. Nikhil Kumar Jha, Adv. ]

Ms. Urmila Chakraborty, Adv. ] For the Corporate Debtor
Mr. Amit Meharia, Adv. ]
Ms. Paramita Banerjee, Adv. ]
Mr. Rohan Raj, Adv ]

**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**DIVISION BENCH, COURT NO. II**
**KOLKATA**

**CP (IB) NO. 304/KB OF 2024**

Ms. Shristi Sharma, Adv. ]

ORDER

**Labh Singh Member(Judicial)**

1. This is an application filed by the applicant/operational creditor for initiation of CIRP against the Respondent company/Corporate Debtor (hereinafter to be referred as "Corporate Debtor") Bridge & Roof (India) Limited, under Section 9 of Code, 2016 for the alleged default in making payment of Rs. 1,54,93,391/- on the part of the Corporate Debtor on account of supply of structural steel and for undertaking civil and structural work at various project sites to the corporate debtor.

2. The operational creditor is a manufacturer of high-quality structural steel products whereas the corporate debtor is a Public Sector Enterprise providing a multifarious range of designs, engineering, construction, project management consultancy services and EPC solutions to the public and private sector. The applicant entered into a transaction for supply of structural steel and for undertaking civil and structural work at various project sites. In pursuance of which,



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various works were sanctioned for a total contract value of Rs 1,87,75,468/-.

3. The operational creditor delivered the goods in terms of several Letter of Intent (LOIs) dated 04.11.2022, 17.11.2022, 15.12.2022 and 20.01.2023 and in total nine LOIs were issued. It was agreed by both the parties that the interest will be paid at the rate of 0.07% per day/24% per annum. According to these LOIs, the payment was to be completed within a period of 30 days from the date of receipt.

4. After delivery of the goods/materials, the invoices were issued but the corporate debtor defaulted in making payment with effect from 22.12.2022. The operational creditor through electronic mails dated 01.02.2023, 21.02.2023, 20.03.2023, 30.03.2023 and 12.01.2024 requested payment of the default amount. The Corporate Debtor acknowledged the debt and sought additional time for repayment but despite this no payment was made.

5. The operational creditor issued legal notice dated 09.03.2024 for making payment but despite receipt of notice no payment was made. The applicant issued demand notice dated 09.07.2024 under section 8 of to the

corporate debtor calling upon to make payment of outstanding operational debt of Rs 1,74,87,340/- which includes principal amount of Rs 1,22,84,977/- and interest amount of Rs 53,02,363/. Pursuant to which, the corporate debtor made a part-payment of Rs 25,00,000/- on 28.08.2024. The outstanding operational debt reduced to Rs 1,54,93,391/- which includes principal amount of Rs. 97,84,391/- and interest amount of Rs 57,08,414/-.

6. It is further case of the applicant that the total operational debt payable by the Corporate Debtor is Rs 1,54,93,391/- which includes principal amount of Rs. 97,84,391/- and interest amount of Rs 57,08,414/- outstanding as on 30.08.2024.

7. Respondent appeared in pursuance of notice issued by this Tribunal and filed its reply raising preliminary objection that the present petition is not maintainable on facts as well as law. The present petition has been filed in gross abuse of the process of law and the same is liable to be dismissed in limine.

8. On merits, it has been replied that the alleged Corporate Debtor had issued different and unconnected notice inviting Tenders for works; however, the said Company

petition fails to disclose any of the NITs or details thereof. The answering respondent had issued five letters of intents(LoIs) to the alleged Operational Creditor for different project sites from 04.11.2022 to 20.01.2023. A perusal of the NITs, as well as the LoIs so annexed by the alleged Operational Creditor would reveal that the said Company Petition has been filed in gross suppression of material facts with an ulterior motive and malafide object to mislead this Tribunal to pass suitable orders in its favour.

9. It has further been replied that the total debt computed in the present petition is Rs 1,54,93,391/- as on 30.08.2024 including principal amount being Rs 97,84,977/- and interest being Rs 57,08,41/- claiming interest at the rate of O.07% per day/24% per annum as per invoice annexed with the petition. It is settled law that claim of interest does not fall within the meaning of operational debt under Section 5(21) of the IBC Code; and accordingly, in the definition of operational debt, the word 'interest' has not been mentioned. The interest on delayed payment in respect of an alleged operational debt could not be included with principal debt for the

purpose of reaching threshold limit of Rs 1 crore for filing of the Company Petition and as such, the present Company Petition is not maintainable and must be dismissed in limine.

10. It has further been replied that the alleged Operational Creditor has unilaterally introduced a clause for interest in the invoices annexed with the present Company Petition. It is stated that none of the attached NITs or the LOIs so disclosed by the alleged Operational Creditor contain any clause for interest. There is unilateral imposition of interest computed at the rate of O.O7% per day/24%o per annum in the invoice whereas the LOIs and other contractual documents are silent on such imposition. It is stated that neither was there any agreement for interest nor any clause for payment of interest. It is trite law that interest cannot be part of the total debt if there is no contract to that effect.

11. It is further replied that the claim for interest is wholly untenable being unilateral, contractually impermissible, and without legal foundation and as such the said company petition is not maintainable on the ground amongst others, that the claim amount is below

threshold limit of Rs. 1 crore. The alleged Operational Creditor raised invoices upon the alleged Corporate Debtor for a total amount of Rs. 1,78,57,603/- along with GST to which the alleged Corporate Debtor has admittedly made a part payment of Rs. 80,72,625/- from 21.11.2022 till 24.OL.2023, although payment made by the alleged Corporate Debtor is much more than the admitted payment of the alleged Operational Creditor.

12. It has further been replied that as admitted in the MoM dated 20.03.2025 annexed by the alleged Operational Creditor in Reply to the demurrer application to the said Company petition, "Form C filed on 10.08.2024 by them over NeSL portal for recovery of their dues of Rs 97,84,977.86 and that in response M/ S KL Steel Limited stated that they are entitled to Rs 97,84,977.86. As such, without admitting any liability, the alleged Operational Creditor is also aware that it is, at best, legally entitled to receive only the principal amount and nothing more.

13. There is also claim for liquidated damages of Rs. 8,78,582 upon the alleged operational creditor which is to be considered before making full and final payment, if

any, with regards to each NIT/PO agreed between the parties. Therefore, the present petition deserves to be dismissed.

14. From pleading of the parties, following question arise for consideration and decision by this Tribunal:-

(i) Whether the present petition is maintainable at law?

(ii) Whether there is debt and default as defined in IBC Code 2016?

(iii) Relief to which the applicant is entitled?

15. Heard Learned Counsel appearing on behalf of the operational creditor and the corporate debtor. We have gone through the pleadings of the parties and documents placed on record. We have duly appreciated the law applicable on the facts and circumstances of the present case.

**Issue No. (i) & (ii)**

16. The main contention raised by the respondent/Corporate Debtor is that the alleged claimed debt has been inflated by claiming interest on the basis of invoices for which there is no agreement between the parties and the said

interest claimed is based on unilateral terms and conditions.

17. It is an admitted case of the applicant that the total operational debt of Rs. 1,54,93,391/- allegedly payable by the Corporate Debtor is inclusive of principal amount of Rs. 97,84,391/- and interest amount of Rs 57,08,414/- claimed to be outstanding as on 30.08.2024. The Operational Creditor has claimed interest on the basis of invoices wherein there is term and condition that interest at the rate of 0.07% per day on invoice amount will be charged extra if the payment is not made within the stipulated time.

18. There is nothing on record which may prove that there was any agreement between the parties for payment of interest on the principal amount except term and condition clause in the invoices relied upon by the applicant/operational creditor. It is also an admitted fact that no such interest as claimed in the invoices ever paid by the Corporate Debtor.

19. It is further pertinent to note that the operational creditor filed reply to demurrer application filed by the corporate debtor wherein a reliance has been placed on

Minutes of Meeting (for short "MoM") dated 20.03.2025. It has categorically been recorded in the said MoM that corporate debtor requested to withdraw Form 'C' filed over NeSL portal for recovery of its dues of Rs. 97,84,977.86 pursuant to four LoIs for supply of steel under job order No. 61027 & 71126 dated 17.11.2022 and agreed to release entire due amount in phased manner due to extreme fund shortage at project site. The Operational Creditor, in pursuance thereof, stated that it is entitled to Rs. 97,84,977.86 in pursuance to said four LoIs as stated above and accepted proposal of the Corporate Debtor. The Operational Creditor confirmed that the Form C dated 10.08.2024 and all litigation filed against Corporate Debtor will not be pursued any more till entire payment is released and the same shall stand withdrawn upon receipt of full payment. The details of payment of Rs. 97,84,977.86 is fully mentioned therein job order wise. This MoM dated 20.03.2025 confirms that there is no agreement between the parties for payment of interest as claimed in the present petition.

20. The applicant filed Form 'C' on 10.08.2024 over NeSL portal for recovery of their dues of Rs 97,84,977.86 and

that in response M/ S. K.L Steel Ltd. stated that they are entitled to Rs 97,84,977.86

21. Thus, there is no prior agreement between the parties to claim interest on the operational debt which has been claimed on the basis of invoice. It has been held by the NCLT Kolkata Bench, in the case of Gandhar Oil Refinery (India) Limited v. City Oil Private Limited C.P. (IB) No. 150/KB/2021, that if the levying of interest is not mentioned in any agreement entered by the parties or being specifically admitted by the corporate debtor, cannot be clubbed together with the principal debt to meet the threshold of 'debt' of 1 crore "as ingrained in Section 4 of the Code by virtue of notification No. So 1205(E) dated 24 March 2020 of the Ministry of Corporate Affairs increased the threshold limit from one lakh to one crore for the purpose of section 4 of the Code."

22. The Hon'ble NCLAT in Prashant Agarwal Vs. Vikas Parasrampuria (Company Appeal (AT) (INS) No. 690 of 2022), decided on 15.07.2022, held that principal debt and interest on delayed payment will be considered to assess maintainability in case the interest was stipulated in invoice. The similar view has been observed

in the case of North West Carrying, LPP Vs. Metro Cash and Carry India Pvt. Ltd (CP (IB) No. 133/BB/2022). In this case, it was held that in order to include 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 any of these documents, neither interest nor any other charges can be clubbed with the principal amount or debt.

23. Hon'ble NCLAT in case of Shivani Enterprises Versus S Square Cargo Movers Pvt. Ltd. (2026) ibclaw.in 516 NCLAT while relying on its earlier judgments in case of Shri Durga Scaffolding Noida Pvt Ltd Vs Kanwar Enterprises Pvt Ltd (2026) ibclaw.in 52 NCLAT and SNJ Synthetics Ltd vs Pepsico India Holdings Pvt Ltd (2025) ibclaw.in 342 NCLAT held that:

> "12. The essence of the above two judgements is that the interest amount claimed by an operational creditor cannot be justifiably added to the operational debt if the interest amount reflected in the invoices was not backed by a contractual agreement nor demonstrated by past conduct and practice between the parties. Given this backdrop,

we find that the reliance placed by the Appellant on the judgment of this Tribunal in Prashat Agarwal Vs Vikas Parasrampuria [(2022) ibclaw.in 509 NCLAT] in CA(AT)(Ins) No. 690 of 2022 is misplaced since the Operational Creditor and Corporate Debtor are not in tandem with each other on the levy of interest and there is no contractual agreement on record which provides for levy of interest nor has the Appellant been able to effectively demonstrate that interest was ever paid by the Corporate Debtor. Even the reliance placed on the judgment of this Tribunal in Descent Buildwell supra is misplaced as it was clearly held therein that when written contract does not contemplate interest on delayed payments, mere inclusion of interest in the invoices unilaterally is of no consequence as acceptance of payment of interest by a conduct or actual payment has to be proved which is not the case herein. This backdrop, we find substance in the finding of the Adjudicating Authority that unilateral claim of interest liability in the invoices sans a mutually accepted formal agreement

stipulating payment of interest cannot become part of operational debt".

24. Recently, Hon'ble Supreme Court in case of Anjani Technoplast Limited Versus Shubh Gautam 2026 INSC 410 held that the primary object of the IBC is revival of the Corporate Debtor as a going concern and not to secure repayment of individual dues. The relevant observation of Hon'ble Supreme Court is as follow:

"**23**. The distinction drawn above by this Court is important and bears emphasis. While the IBC incidentally results in the satisfaction of creditors' claims, that consequence is a byproduct of the resolution process and not its primary object. The object is the revival of the corporate debtor as a going concern. It follows that a creditor who approaches the NCLT not with any genuine concern for the resolution of the corporate debtor but purely to secure payment of his individual dues is acting contrary to the purpose and spirit of the Code. The existence of adequate and efficacious alternative remedies makes such misuse all the more apparent.

**24**. Lastly, Section 65 of the IBC provides that if any person initiates the insolvency resolution process fraudulently or with malicious intent for any purpose other than the resolution of insolvency, the Adjudicating Authority may impose a penalty. The presence of this provision in the statute itself underscores the legislative intent that the IBC is not to be misused as a tool for recovery or as a lever to coerce payment".

25. It is clear from pleading of the applicant and minutes of meeting held on 20.03.2025 which has been reduced to writing that the sole purpose of filing the present application is recovery of dues of Rs. 97,84,977.86 by the applicant and not to resolve the insolvency of the Corporate Debtor. No doubt a Public Sector Company being a CPSE can be admitted in CIRP in case it fails to pay its dues because of insolvency; however, the respondent Company is a prominent profit earning Public Sector Enterprises(CPSE) under the Ministry of Heavy Industries. The applicant, by filing the present application, has opted to recover its dues and not to seek resolution of the Corporate Debtor.

26. In view of the above said discussion, this Tribunal holds that the CP (IB) 304/KB/2024 is not maintainable at law; and hence, the same deserves to be dismissed. Consequently, the CP (IB) 304/KB/2024 stands dismissed being not maintainable at law. The applicant is at liberty to avail alternative efficacious remedy for recovery of its dues in accordance with law.

27. In view of our finding in the main petition, the Interlocutory Application being no.111/KB/2025 filed by the Corporate Debtor i.e., Bridge and Roof CO. (India) Ltd stands disposed in terms of our order on main petition.

**Rekha Kantilal Shah**
**Member(Technical)**

**Labh Singh**
**Member(Judicial)**