BRFL
Bombay Rayon Fashions Ltd

8th August, 2022

To,

**BSE Limited**
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai-400 001

**Scrip Code- 532678**

**National Stock Exchange of India Ltd.**
"Exchange Plaza", Plot No. C/1, G Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai-400 051.

**Scrip Code-** BRFL

Dear Sir / Madam,

**Sub: Update on CIRP commencement of** Bombay Rayon Fashions Limited

In continuation of earlier communication dated 8th June, 2022, with respect to initiation of CIRP under Insolvency & Bankruptcy Code, 2016 in Bombay Rayon Fashions Limited **("Company" or "Corporate Debtor")**, the Company wishes to submit that-

Pursuant to an appeal filed by Mr. Prashant Agrawal, member of the suspended Board, the Hon'ble National Company Law Appellate Tribunal Principal Bench (NCLAT) vide its Order dated 15th June, 2022 stayed the constitution of Committee of Creditors (CoC). Subsequently NCLAT dismissed the aforesaid appeal on 15th July, 2022.

The Company wishes to submit further that, the first meeting of CoC was held on 26th July, 2022. The CoC in its first meeting has considered and approved amongst other matters, the appointment of new Resolution Professional, Mr. Satish Kumar Gupta, replacing the present Interim Resolution Professional (IRP), Mr. Santanu T. Ray.

The Hon'ble National Company Law Tribunal, Mumbai (NCLT) vide its Order dated 4th August, 2022 has approved the appointment of new Resolution Professional. The said Order is enclosed herewith for your reference and records.

You are requested to kindly take the aforesaid documents in your records.

Yours Sincerely,

Prachi

Prachi Deshpande
Company Secretary

Encl:-

- NCLAT Order dated 15th July, 2022
- NCLT Order dated 4th August, 2022

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**
**PRINCIPAL BENCH**

**Company Appeal (AT) (Ins) No. 690 of 2022**

**[Arising out of Order dated 07.06.2022 passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench in CP (IB) No. 1443/MB-IV/2020.]**

**IN THE MATTER OF:**

**Mr. Prashat Agarwal,**
**Member of Suspended Board of**
**Bombay Rayon Fashions Limited,**
**Having his address at 3rd Floor**
**DLH Mangal Murti Buildig**
**Linking Road, Santacruz (West)**
**Mumbai, Maharashtra- 400054** **...Appellant**

**Versus**

1. **Vikash Parasrampuria,**
**Sole Proprietor of Chiranjilal Yarns Trading**
**Having office at Room No. 5, 1st Floor,**
**Jaihind Building No. 1, Dr. A.M. Road,**
**Bhuleshwar, Mumbai- 400002.** **...Respondent No. 1**

2. **Mr. Santanu T. Ray.**
**Interim Resolution Professional of**
**Bombay Rayon Fashions Limited**
**Having its Office at:**
**301, A Wing, BSEL Tech Park**
**Sector 30 A, Opposite Vashi Railway Station Vashi,Thane, Navi Mumbai,**
**Maharashtra- 400705** **...Respondent No. 2**

**Present:**

**For Appellant** : **Mr. Abhijeet Sinha, Mr. Sunil Vyas, Mr. Nausher Kohli, Mr. Palzer Moktan, Ms. Dipti Das, Mr. Deep Morabia & Mr. Aditya Shukla, Advocates.**

**For Respondent** : **Mr. Saurabh Pandya, Mr. Viraj Parikh, Mr. Mahur Mahajan, Advocate for R-1.**
**Ms. Rubina Khan & Mr. Rohit Gupta, Advocate for R-2.**

**J U D G M E N T**
**(Virtual Mode)**
**(15.07.2022)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

The Present Appeal is filed against the Impugned Order (IO) dated 07.06.2022 passed in CP (IB) No. 1443/MB-IV/2020 by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench- IV, whereby, the Adjudicating Authority admitted an Application filed by Respondent No. 1 under Section 9 of the Insolvency & Bankruptcy Code, 2016 **(in short IBC)** and appointed Mr. Santanu T. Ray as Insolvency Professional (IRP). The Impugned Order is placed as Annexure A-1 of 'Memo of Appeal' Volume-I at Page-19 to 26.

**Brief Facts:**

2. Vikash Parasrampuria- Sole Proprietor of 'Chiranjilal Yarns Trading' the Operational Creditor (**in short OC**) is supplier of different type of yarns and has supplied goods to Bombay Rayons Fashions Ltd. who is the Corporate Debtor herein (**in short CD**). The OC has raised invoices between March, 2017 and January 2020, wherein, OC supplied goods for Rs. 2,02,26,017/- under nine invoices. The CD has paid three invoices with substantial delay; for one invoice part payment made and remaining five invoices, CD has failed to make any payment.

3. Based on above position, the Adjudicating Authority admitted the Section 9 application and approved initiation of CIRP along with appointment of IRP.

4. Aggrieved by Impugned Order Appellant- Mr. Prashant Aggrawal, Member of Suspended Board of Bombay Rayon Fashions Limited has preferred Appeal before this Tribunal.

**Appellant's Submissions:**

5. Learned Counsel for the Appellant, in fairness, brought to the notice of this Tribunal that no amount has been paid to settle the matter as mentioned in the order consequent to hearing before this Tribunal on 15.06.2022.

6. He, however, argued that Section 4 of IBC mandate that for an application to be maintainable under Section 9 of IBC, the minimum amount of Operational Debt must be Rs. 1crore. According, to Learned Counsel in the present case the principal amount of debt is only Rs. 97,87,220/- which is below the prescribed threshold limit. He argued that as per notification No. S.O 1205(E) dated 24.3.2020 issued by the Ministry of Corporate Affairs, Government of India, threshold limit of Rs. 1 Crore will be applicable for any application filed under Section 7 or 9 of IBC. He therefore, emphasis that application was ex-facie not maintainable and consequently is nullity in law and deserved to be dismissed.

7. He also cited case laws of NCLT, namely, '*CBRE South Asia Pvt. Ltd. vs. United Concepts and Solutions Pvt. Ltd.*' *and* NCLAT's Judgement of *Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd.* According to Learned Counsel, Hon'ble NCLAT in judgment in case of '*Steel India vs. Theme Developers Pvt. Ltd.*' has not accepted claims of 'OC'. Learned Counsel also cited case laws of Hon'ble Supreme Court of India, namely, *'Reliance Cellulose Products Ltd. vs.*

*Oil and Natural Gas Corporation Ltd.'* (2018) 9 SCC 256 & *'Oriental Structural Engineers Pvt. Ltd. vs. State of Kerala'* (2021) 6 SCC 150.

8. Appellant also raised issue regarding limitation stating that cause of action arose as early in 2017 but the petition was filed on 16 December, 2020 hence time barred by Limitation Act, 1963.

**Findings**

9. We have pursued the record available and also heard Learned Counsels based on which we observe the following:-

Issue of limitation:

(i) As regard time barred claims as per Limitation Act, it has been held by the Adjudicating Authority that last date of invoice was 01.02.2020 and date of filing of Application before NCLT, Mumbai was 31.12.2020 and therefore Section 9 Application was made well within the limitation.

(ii) We find no inconsistency in order of Adjudicating Authority on this issue and therefore issue of limitation as raised by Learned Counsel for the Appellant cannot be agreed to.

Issue of maintainability:

(i) The other issue as brought out by Learned Counsel is about maintainability of the Application being principal operational debt claim of only Rs. 97,87,220 which is below the minimum threshold limit of Rs. 1 crore as per Section 4 of IBC to file Application for CIRP proceeding under Section 9 of IBC.

(ii) Section 4 of the IBC reads as follows: –

> *"**4. Application of this Part** – (1) This part shall apply to matters relating to the Insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees.*
>
> *Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees."*

Vide the notification No. S.O 1205 (E) dated 24.3.2020 issued by the Ministry of Corporate Affairs as announced the threshold limit had been increased from Rs. 1 lakh to Rs. 1 crore for purpose of Section 4 of IBC.

(iii) Learned Counsel for Appellant has cited few cases as discussed earlier in favour of appeal hence it will be desirable to go through.

(a) We have respectfully considered context and ratio of two cited judgements of Hon'ble Supreme Court of India by Learned Counsel and noted that case of '*Reliance Cellulose Products Limited v. Oil and Natural Gas Corporation Limited*' was with respect to Section 29 of Arbitration Act, 1940 and case of '*Oriental Structural Engineers Private Limited vs. State of Kerala*' was with respect to Section 31(7), 34 & 37 of Arbitration and Conciliation Act, 1996. Although, Hon'ble Supreme Court of India touched upon interest issue but the references were not with respect to treatment of interest on delayed payment as debt especially to calculate threshold limit to decide

about maintainability of Application, which is the case brought before this Appellant Tribunal.

(b) As regard case of '*Steel India vs. Theme Developers Pvt. Ltd.*', The relevant paras of the cited Judgement is given below:-

*"12. The respondent further contends that, the claim of interest alone on loan, does not clarify as an 'Operational Debt' under the 'I & B Code'. It is settled that the charging of interest ought to be an actionable claim enforceable under law, provided it was properly agreed upon between the parties. In this case, Learned Counsel for the Appellant submits that the email dated 05th September 2015 relates to the quotation only...*

*13. The Appellant contends that as per agreed terms @2% Interest was payable if the payment is delayed for more than 60 days. In this case, undisputedly, payment was delayed. Therefore the 'Corporate Debtor' is liable to pay interest amount as per agreed terms and conditions.*

*14. The 'Operational Creditor' has placed reliance on the email dated 05th September 2015, which shows that 'Operational Creditor' quoted the rate to the 'Corporate Debtor' wherein, it was mentioned that if payment was delayed for more than 60 days, then interest@ 2% per month will be charged. The Operational Creditor / Appellant has not filed any document to show that the Corporate Debtor ever agreed to pay the interest on delayed payment. Based on an email dated 05th September, 2015, it is apparent that the Operational Creditor quoted the rate which contains the clause of charging interest on delayed payment if payment is not made within 60 days. It was mentioned that on delayed payment interest @ 2% per month will be charged but no document is placed before us to show that the said*

*term of charging 2% interest on delayed payment was accepted by the 'Corporate Debtor.* ***The Copies of the invoices, which are annexed with the Appeal does not contain the said term that interest is to be paid @ 2% per month, If the payment is delayed for more than 60 days.***

*15. It is pertinent to mention that 'Operational Creditor' issued first demand notice on 28th December 2018. Based on this first demand notice. The 'Corporate Debtor' made the payment of the principal amount, and only an interest amount of Rs. 22,64,054/- remained outstanding towards interest, for which the 'Corporate Debtor' raised the dispute. After that, the 'Operational Creditor' issued the demand notice on 15th January 2019 Application for initiation of corporate insolvency resolution process under Section 9 of the I & B Code was filed before the Adjudicating Authority.* ***Before the issuance of the second demand notice, the dispute relating to the payment of interest was existing. Therefore, the Adjudicating Authority rejected the Application by the Impugned Order.***

*16. It is also pertinent to allege that the outstanding amount is towards interest on the delayed payments, for which there was a pre-existing dispute, before issuance of demand notice.* ***The claimed claim amount, towards interest on loan alone, cannot be termed as an 'Operational Debt'. For the reasons aforesaid, we are not inclined to interfere with the order passed by the Learned Adjudicating Authority."***

*(emphasis supplied)*

We have perused 9 invoices issued by CC raised against CD at Page No. 47 to 55 of the Memo of Appeal, Volume I and noticed that it has clearly

been mentioned under terms and condition " interest will be charged @ 18% plus GST P.A after due date of the bill" unlike in cited judgment of NCLAT *'Steel India vs. Theme Developers Pvt. Ltd.' (Supra)* where there was no mention of interest in delayed payment at all vis-à-vis specific mention of interest on delayed payment in all nine invoices in present case before this Tribunal. Hence. the cited case by Learned Counsel is not exactly and directly relevant.

(c) The case of *'CBRE South Asia Private Limited v. United Concept and Solutions Private Limited'* cited by Counsel for Appellant is from NCLT, Delhi, hence, no comment given.

Incidentally, we have noted that divergent views have been taken by various NCLT with respect to treatment of interest on delayed payment to treat such component of interest as operational debt.

(iv) We have also noted that Adjudicating Authority has also referred one Judgment of this Tribunal i.e *Pavan Enterprises v. Gammon India* while allowing interest on delayed payment to be part of total debt for calculation of minimum threshold limit for Section 4 of IBC in the Impugned Order itself (at Page – 22 of the 'Memo of Appeal', Volume-I).

> *"(f).....*
>
> *judgement dated 27th July 2018 in Company Appeal No.148 of 2018 in Pavan Enterprises v. Gammon India, wherein the NCLAT has held that "If in terms of any agreement interest is payable to the Operational of Financial Creditor then the debt will include interest".*

In this context, as discussed above, all 9 invoices clearly stipulated provision of Interest on delayed payment. It is also observed that payments of three invoices has been made in full and for one invoice in part against said invoices by CD and no dispute on this clause was ever raised as noted from record available before us.

(v) Before coming to any conclusion, it will also be pertinent to go through legal definition of debt. The definition of debt as per section 3(11) of IBC is as under:-

> ***3(11)*** *"debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt."*

Since, the word "claim" is mention in definition of debt in Section 3(11) we need to refer to definition of claim under Section 3(6) of IBC which is as follows:-

> **"3.(6)** *"claim" means*
>
> *(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*
>
> *(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;*

Since, interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for "right to payment" (Section 3(6) IBC) and therefore will form part of "debt" (Section 3(11) IBC)

(vi) It is, therefore, clear from these facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself. It is noted that the total principal debt amount of Rs. 97,87,220/- along with interest the total debt makes total outstanding as Rs. 1,60,87,838/- . Thus, the total debt outstanding of OC is above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O 1205 (E) dated 24.3.2020 (*Supra*), and meets the criteria of Rs. 1crore as per Section 4 of IBC and Application is therefore maintainable in present case.

We concur with the orders of Adjudicating Authority on this issue also.

(vii) We, therefore, do not find any merit in the present appeal and dismiss the same.



[Justice Ashok Bhushan]
(Chairperson)

[Justice M. Satyanarayana Murthy]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

*Simran*

**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**MUMBAI BENCH**

**COURT – IV**

1. **IA-2127/2022 in C.P.(IB)/1443(MB)/2020**

CORAM:

SHRI MANOJ KUMAR DUBEY
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **04.08.2022**

NAME OF THE PARTIES: Vikash Parasampuria
Vs.
Bombay Rayon Fashions Limited

SECTION: 9, 22(3)(b) OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

**O R D E R**

The Court is convened through Video Conference.

1. Counsel for the CoC present. Ms. Rubina Khan, Ld. Counsel for the IRP present.

2. IA-2127/2022 has been filed by the Committee of Creditors (CoC) seeking approval of appointment of Resolution Professional (RP) replacing the Interim Resolution Professional (IRP). Counsel appearing for the CoC submits that Mr. Santanu T. Ray was appointed as IRP of the Corporate Debtor herein viz. Bombay Rayon Fashions Ltd., by this Tribunal vide admission order dated 07.06.2022. However, the CoC in its first meeting held on 26.07.2022 proposed to replace the IRP with Mr. Satish Kumar Gupta having Registration No.: IBBI/IPA-001/IP-P00023/2016-17/10056 as RP. The same was approved by 100% voting of the CoC members. Mr. Satish Kumar Gupta has given his Letter of Consent to act as RP of the

Contd…….2

Corporate Debtor. A resolution for appointment of new RP replacing the IRP has also been passed in the said meeting.

3. In view of the unanimous decision by the CoC, this Bench is hereby approved the appointment of new RP; Mr. Satish Kumar Gupta [Regn. No.: IBBI/IPA-001/IP-P00023/2016-17/10056]. CoC is directed to ensure that all dues payable to the erstwhile IRP is cleared immediately, if not already done.

4. With the above directions, IA-2127/2022 is **allowed** and disposed of.

Sd/-
**MANOJ KUMAR DUBEY**
**Member (Technical)**

Sd/-
**KISHORE VEMULAPALLI**
**Member (Judicial)**

04.08.2022 / pvs