

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 812 OF 2023**

Under Section 60 (5) of Insolvency &  
Bankruptcy Code, 2016

Mr. Rakesh Bothra

**...Applicant**

V/s

Mr. Alok Kailash Saksena

**...Respondents**

In the matter of

C.P.(IB) No. 1807/MB/2018

Bank of Baroda

**.... Financial Creditor**

Vs.

Topworth Urja & Metal Limited

**...Corporate Debtor**

***Order delivered on: 21/11/2023***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

***Appearances:***

For the Applicant : Ms. Akansha Agarwal,  
Advocate

For the Respondent : Mr. Viraj Parik, Advocate

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

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1. This Application IA 812/2023 is filed by the Resolution Professional of M/s Makalu Trading Ltd i.e. Sh. Rakesh Bothra (“Applicant”), in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Topworth Urja & Metals Limited (“Corporate Debtor”) u/s 60(5) of the Insolvency & Bankruptcy Code, 2016 (“Code”) for directions to Sh. Alok Kailash Saksena, the Interim Resolution Professional (“Respondent No. 1” or “IRP”) to accept the interest claim for Rs. 6,32,30,108/- which has been rejected by him vide letter dated 23.1.2023.
  
2. On 02.04.2018 Bank of Baroda filed a CP No. 1807 of 2018 under section 7 of the IB Code against Corporate Debtor, and on 26.12.2018, the Applicant filed another CP No. 4521 of 2018 under section 7 of the IB Code seeking CIRP in the matter of the Corporate Debtor.
  - 2.1. On 02.02.2021, the Corporate Debtor filed its Reply stating that the Applicant was approached by Corporate Debtor for discounting their Bill for which the Applicant was to receive interest on the amount of bills of Corporate Debtor discounted pursuant to this arrangement.
  - 2.2. On 13.01.2022, Zenil Traders Private Limited filed a CP No. 168 of 2022 under section 9 of the IB Code against the Applicant, which was allowed on 05.04.2022 by this Tribunal appointing the Applicant as the Interim Resolution Professional of the Applicant.
  - 2.3. During the proceedings in CP No. 4521 of 2018, the Corporate Debtor submitted on 14.06.2022 before this Tribunal that they will be issuing the Demand Draft for the value of principal amount in favour of Applicant, on 16.06.2022 a Demand Draft bearing no. 002912 was issued in favour of the Applicant for an amount of Rs.

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4,52,16,345/-, however, the Corporate Debtor didn't pay any interest amount.

- 2.4. On 12.08.2022, this Tribunal admitted the CP No. 1807 of 2018 and Mr. Alok Kailash Saksena was appointed as the IRP of the Corporate Debtor. On 25.08.2022 the IRP filed a claim along-with all the relevant documents on behalf of Applicant for an amount of Rs. 6,32,30,108/- before the IRP in CIRP of the Corporate Debtor, which was rejected on 23.01.2023 by IRP.
3. The Respondent IRP filed a reply stating that the Corporate Debtor had approached the Applicant for bill discounting facility against the invoices raised by the Corporate Debtor upon MSEDCL, for supply of electricity under Energy Purchase Agreement, and consequent to it, the Corporate Debtor had executed an undertaking dated 30.5.2013 wherein it was requested by the Corporate Debtor to MSEDCL to make the payments of the invoices directly to the Applicant herein against the invoices which were being discounted by the Applicant. Accordingly, it was contended that it is clear that no consideration was flowing/was to be paid by the Corporate Debtor to the Applicant, and in any event, no consideration against time value of money can be said to be due and payable from the Corporate Debtor to the Applicant as it is evident from the undertaking dated 30.5.2013 and letters that the obligation to pay the money under the invoices was of MSEDCL. It is also stated that the transaction as alleged by the Applicant in its Purported Claim to be part of an ICD is false, rather it was a bill discounting facility given by the Applicant to the Corporate Debtor. The principal amounts due to the Applicant were reflected under the "Trade Payable" in the financial statements of the Corporate Debtor.
4. We heard both the Counsel and perused the material available on record.
- 4.1. It is undisputed fact that the Applicant had discounted the invoices raised upon MSEDCL by the Corporate Debtor, and whereby the

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Applicant paid the money due from MSEDCL to the Corporate Debtor, and the payment was to be received from MSEDCL by the Applicant. We find that the claim of the Applicant was rejected and the reasons for the same are explained in letter dated 23.1.2023. It reads as *“The COC noted that to become a financial creditor, there is requirement of loan repayment schedule along with interest rate clause in the loan agreement. The said loan agreement is not available either with the Topworth Urja & Metals Limited or Makalu Trading Limited....It may be noted that there was no settlement agreement for the interest in terms of above referred order of the Hon’ble NCLT dated 23<sup>rd</sup> June 2022 wherein the principal amount has been paid by Topworth Urja & Metals Limited..... In case of claim submitted by Makalu Trading Limited, there is no such stamped agreement and the verbal agreement relied upon by you or any unstamped agreement cannot be accepted as per the observation laid down by the Hon’ble Supreme Court in the aforementioned judgement”*.

4.2. We also find that the Corporate Debtor had paid the interest to the Applicant in the past, which is evidenced from the tds entries appearing in form 26AS u/s 194A of the Income Tax Act, 1961, which pertains to deduction of tax at source on interest, and this fact is also evidenced from a letter dated 1.3.2016 written by the Corporate Debtor to the applicant certifying that an amount of Rs. 79,92,329/- has been paid towards interest. We also find that the Corporate Debtor had acknowledged a sum of Rs. 9,46,20,985/- as due and payable to the Applicant on 29.3.2017 when the Applicant had sought the confirmation of amount of balance of Rs. 10,48,51,970/-, and also submitted the ledger account of the Applicant as appearing in their books.

4.3. The Respondent has emphasised that the applicant had filed the section 7 application on the basis of outstanding as “ICD”, whereas it is claiming the money under bill discounting arrangement, and the money due to the Applicant were classified under “Trade Payable”.

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We are of considered view that substance of a transaction is important rather than its form, and accounting entries can not determine the character and nature of a transaction. The evidences placed before show demonstrate that the Applicant had advanced money from time to time and the same was repayable along with interest in the form of realisation from MSEDCL, and in case of default, the same was to be repaid by the Corporate Debtor, a fact which is acknowledged in the books of accounts also.

- 4.4. We find that the Section 5(8) of the Code includes “*receivables sold or discounted other than any receivables sold on nonrecourse basis*” under the definition of financial debt. There is no dispute that the money was disbursed to the Corporate Debtor in consideration of assignment of such invoices and assignment of such invoices was not on nonrecourse basis, which is evidenced from the principal being acknowledged and paid by the Corporate during the course of pendency of Section 7 application filed by the Applicant.
- 4.5. There is no agreement in place to demonstrate the rate of interest on such facility. Accordingly, the Respondent is directed to deduce the rate of interest from the ledger entries and the period upto which such interest was provided in the books of the Corporate Debtor. On this basis, he is directed to admit any interest as discernible from the books of account of the corporate debtor remaining remaining unaccounted. The Applicant shall provide copy of ledger account with narration in its books of account to the Corporate Debtor to assist him to make necessary inquiry for verification.
5. With the aforesaid directions, we dispose of IA 812/2023.

**Sd/-**

**Prabhat Kumar**  
Member (Technical)

**Sd/-**

**Justice V.G. Bisht**  
Member (Judicial)