

(2023) 04 NCLT CK 0013

In the National Company Law Tribunal

Case No : C.P.(IB)/274(MB)/2023

Tricon Technologies Vs B E Billimoria And Company Limited ?

Date of Decision : 10-04-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 4, 9

Citation : (2023) 04 NCLT CK 0013

Hon'ble Judges : Kishore Vemulapalli, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Yash Chawda, Vinay Kumar Jain

Final Decision : Dismissed

Judgement

1. Mr. Yash Chawda a/w Mr. Vinay Kumar Jain, Ld. Counsel for the Operational Creditor present. None present for the Corporate Debtor.
2. This is a Petition filed by Tricon Technologies (Operational Creditor) under Section 9 of the IBC against B.E. Billimoria and Company Ltd. (Corporate Debtor) for initiation of Corporate Insolvency Resolution Process (CIRP) as an amount of ₹ 1,07,98,464.90 is due and payable by the Corporate Debtor to the Operational Creditor, as claimed.
3. Upon perusal of the Petition, the Bench observed that the amount claimed in the Petition is ₹ 1,07,98,464.90 out of which ₹ 98,77,922.90 is principal amount and the remaining is the interest claimed as 'payable under MSME Act'. The date of default is not specifically stated in Part-IV. However, the Demand Notice states as 02.12.2022. The date of MSME registration is 12.08.2020. In other words, the Applicant was not registered under MSME Act when the amount under invoices claimed to be in default were raised.
4. The Operational Creditor received Work Order from the Corporate Debtor on 06.04.2018. However, said Work Order does not stipulate payment of interest on the delayed payment. The Work Order stipulates 5% retention money from each invoice, to be released after 12 months from virtual completion of the project

against submission of the guarantee bond for 10 years.

5. The Operational Creditor has provided services to the Corporate Debtor and raised invoices from 24.05.2018 till 18.10.2021. We find that the invoices do not carry stipulation of payment of interest. There is no stipulation for payment of interest on the Work Order as well. Therefore, the interest does not form part of the debt. Consequently, the amount claimed to be in default is less than ₹ 1 crore, which is below the threshold limit as prescribed in Section 4 of the Code. Therefore, the present Petition is not maintainable.

6. In view of the above, this Petition is dismissed as not maintainable.