

IN THE HIGH COURT OF ORISSA AT CUTTACK

**COPET No.42 Of 2003
(Through hybrid mode)**

M/S. Textiles Inland Agencies

Petitioner

Mr. Gautam Mukherjee, Senior Advocate
with Mr. A.K. Mohanty, Advocate

-versus-

M/S Orient Paper Mills

Opposite Parties

Mr. Surya Prasad Mishra, Senior Advocate
with Mr. S.S.Das, Advocate

CORAM: JUSTICE ARINDAM SINHA

**ORDER
05.04.2022**

**Order No.
80.**

1. Mr. Mishra, learned senior advocate appears on behalf of the company and relies on memo dated 31st March, 2022, on copy served. The memo discloses, inter alia, letter dated 11th May, 2020 written by the creditor saying as under.

*“As per the order dated 28.02.2020 of the Hon’ble High Court Orissa, we are requesting you to pay your admitted amount of Rs.6,34,942/- in our bank account at **State Bank of India, account number – 11107944175, N S Road Branch Kolkata, IFSC Code: SBIN00144** under confirmation to us. A copy of cancelled cheque is attached herewith.*

*Alternatively you can send the cheque or draft at our office address i.e., **TEXTILS INLAND AGENCIES (MFG), 4, LYONS***

RANGE, 6TH FLOOR, KOLKATA 700001.

Kindly note the above payment would be accepted without prejudice.”

2. Mr. Mishra then hands up copy of letter dated 4th April, 2022 with its enclosure being photocopy of cheque no.010585 dated 4th April, 2022 for Rs.6,34,942/- drawn on HDFC Bank favouring the creditor.

3. Mr. Mukherjee, learned senior advocate appears on behalf of the creditor and submits, he, at present, does not have instructions regarding receipt, presentation or payment on the cheque but the hearing and adjudication can happen. The cheque amount is only part of the claim on interest for the delayed payment. He relies on sections 4 and 5 in Interest on delayed payment to Small Scale and Ancillary Industrial Undertakings Act, 1993. He submits further, by operation of section 32 in Micro, Small and Medium Enterprises Development Act, 2006, the Act of 1993 stood repealed. The corresponding provisions in the 2006 Act are sections 15 and 16.

4. Mr. Mishra responds, calculation of interest on delayed payment was made up to the date of last installment payment of the principal, applying provisions in sections 4 and 5 of the 1993 Act.

5. The controversy is regarding amount of interest payable on

delayed payment of the principal, if can be a reason for winding up the company. The creditor filed for winding up alleging that its admitted due the company could not pay. Fact is that during pendency of the winding up petition, the company paid the debt. There is dispute on quantum of the delayed payment interest.

6. It is true, by section 32 in the 2006 Act, the 1993 Act stood repealed. Sub-section (2) in section 32 also says that notwithstanding the repeal, anything done or any action taken under the repealed Act shall be deemed to have been done or taken under the corresponding provisions of the 2006 Act. Mr. Mukherjee has pointed out that corresponding sections are sections 15 and 16 in the 2006 Act. Said two sections must also include provision in section 6 of the repealed 1993 Act. Sub-section (1) in said section 6 is reproduced below.

*“ 6. Recovery of amount due. – (1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.
... ..”*

7. Above extracted provision provided for statutory remedy of recovery, inter alia, on interest. There is dispute regarding quantum of it. Therefore, it cannot be an admitted debt due against the company,

with which petitioner can ask Court to consider, for the purpose of winding up the company. It had approached this Court, praying for winding up of the company, on an admitted debt due, which has since been paid by the company. In the circumstances, no case can be made out by the creditor on its claim of delayed payment interest, accrued during pendency of the winding up petition and disputed by the company, for its winding up.

8. The winding up petition is dismissed.

(Arindam Sinha)
Judge

Prasant

