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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 63/9/JPR/2022

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016)

IN THE MATTER OF:

GRAINTECH FOODS (INDIA) PVT. LTD.
C-119, Lal Kothi Scheme, Opposite Vidhan
Sabha, Jaipur- 302015 (Rajasthan)

...Operational Creditor/Petitioner

VERSUS

RAJASTHAN STATE BEVERAGES
CORPORATION LTD.
(A Govt. of Rajasthan undertaking)
1st Floor. 'D'- Block, Vitta Bhawan, Janpath,
Jaipur- 302005 (Rajasthan)

...Corporate Debtor/Respondent

For the Operational Creditor	:	Nivedita R Sarda, Adv. Sagrika Joshi, Adv.
For the Corporate Debtor	:	Susshil Daga, Adv. Akshita Koolwal, Adv

Order Pronounced On: 30.04.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

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1. The present application has been filed by *M/s Graintech Foods (India) Pvt. Ltd.* ('Operational Creditor') through its authorised representative, *Mr. Sharad Agarwal*, under Section 9 of the Insolvency & Bankruptcy Code, 2016 ('IBC'/ 'Code') against *Rajasthan State Beverages Corporation Ltd.* ('Corporate Debtor') for initiation of Corporate Insolvency Resolution Process ('CIRP') on account of Corporate Debtor's default in payment of operational debt of Rs. 6,86,09,943/- (Rupees Six Crore Eighty-Six Lakh Nine Thousand Nine Hundred and Forty-Three Only) as on 30.06.2022.
2. The Corporate Debtor is a public company incorporated under the provisions of Companies Act, 1956 on 24.02.2005 having CIN: U15511RJ2005SGC020336. The authorized share capital of the Corporate Debtor is Rs. 5,00,00,000/- (Rupees Five Crores Only) and the paid-up capital is Rs. 2,00,00,000/- (Rupees Two Crores Only). The registered office of the Corporate Debtor is situated at *Jaipur, Rajasthan*. Therefore, the Corporate Debtor falls within the territorial jurisdiction of this Adjudicating Authority.
3. The present application has been filed on the following set of facts:
 - 3.1. The Corporate Debtor issued a tender notice dated 03.07.2017 inviting online bids to outsource the work of loading and unloading of IMFL/ BEER cartons at 40 depots situated in various districts in the State of *Rajasthan*. The Operational Creditor submitted its bid to the Corporate Debtor on 25.07.2017. The Operational Creditor being

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a successful bidder was allotted the tender for loading and unloading of cartons at 33 depots out of the 40 depots by the Corporate Debtor. Consequently, work orders were also executed between the parties and accordingly, the Operational Creditor provided the fixed deposit amount for each division to the Corporate Debtor. The details of the tender allotment and the work orders are provided hereunder:

S. No.	Division	No. of Depots allotted	Allotment date	Date of Agreement/ Work Order	Fixed Deposit
1.	Bikaner	4	04.10.2017	01.01.2018	Rs. 3,01,700/-
2.	Bharatpur	4	04.10.2017	13.12.2017	Rs. 1,94,200/-
3.	Jaipur	9	04.10.2017	13.12.2017	Rs. 9,42,500/-
4.	Kota	4	04.10.2017	13.12.2017	Rs. 2,09,400/-
5.	Udaipur	7	27.10.2017	13.12.2017	Rs. 6,09,400/-
6.	Ajmer	5	27.10.2017	13.12.2017	Rs. 4,66,200/-
Total		33	Rs. 27,23,000/-		

3.2. Thereafter, the Operational Creditor commenced loading and unloading of cartons and loose bottles at the said 33 depots as per the instructions of the Corporate Debtor. On the basis of work done, monthly invoices were raised and sent to headquarters of the Corporate Debtor. A scanned copy of the invoices was also sent to the respective divisions of the Corporate Debtor via email. The Operational Creditor raised as many as 152 invoices amounting to Rs. 31,51,97,599/- (Rupees Thirty-One Crore Fifty-One Lakh Ninety-Seven Thousand and Five Hundred and Ninety-Nine Only)

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for the period from October, 2017 to June 2019. The summary of the invoices along with details of the amount received/amount extended and interest as on 30.06.2022 is tabulated below:

Sr. No.	Division	No. of invoices raised	Total Invoice amount (INR)	Amount Received (INR)	Amount Outstanding (INR)	Interest (INR) as on 30.06.2022
1.	Bikaner	27	3,29,43,552.00	2,97,88,193.80	31,55,358.20	2769735.88
2.	Bharatpur	25	2,20,82,156.00	2,08,99,676.44	11,82,479.56	1123254.29
3.	Jaipur	27	10,61,89,024.00	9,21,45,145.85	1,40,43,878.15	10508909.19
4.	Kota	24	2,49,49,632.00	2,23,83,290.24	25,66,341.76	2000866.43
5.	Udaipur	25	7,84,17,686.00	6,80,20,932.98	1,03,96,753.02	7742529.85
6.	Ajmer	24	5,06,15,549.00	4,36,06,666.01	70,08,882.99	6110953.43
Total		152	31,51,97,599/-	27,68,43,905/-	3,83,53,694/-	3,02,56,249/-

3.3. As per the understanding between the parties, the invoices were to be raised by the Operational Creditor within first 10 days of each month and the Corporate Debtor was to clear these invoices till 15th day of each month. It came to the attention of the Operational Creditor that the invoices raised were not being paid in full by the Corporate Debtor. Thereafter, the Operational Creditor sent as many as 22 letters to the headquarters and division offices of the Corporate Debtor requesting them to clear the outstanding dues but no heed was paid to the same.

3.4. In the meantime, the tenders for six divisions i.e., *Kota, Ajmer, Udaipur, Jaipur, Bharatpur, and Bikaner*, which were originally expiring on 31.03.2019 were extended till 30.06.2019 vide a Letter

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dated 08.03.2019 bearing No. *F1/RSBCL/Loading-Unloading/2018-19/7861*.

- 3.5. It was pointed out that the Fixed deposit money of Rs. 27,23,000/- (Rupees Twenty-Seven Lakh and Twenty-Three Thousand Only) which was provided as per the tender was liable to be released by the Corporate Debtor at the time of expiration of the tender term. The payment towards the fixed deposit was made by the Corporate Debtor after a delay of one and half years. The security deposit was received by the Operational Creditor on 28.11.2020 instead of 30.07.2019 i.e., the time of expiration of the tender. Thereafter, on 02.08.2021, an amount of Rs. 11,73,220/- (Rupees Eleven Lakh Seventy-Three Thousand and Two Hundred and Twenty Only) was received from the Corporate Debtor.
- 3.6. The Operational Creditor performed its services diligently but the Corporate Debtor did not adhere to the terms and conditions of the work order by defaulting in payment therein. The Operational Creditor raised invoices of Rs. 31,51,97,599/- (Rupees Thirty-One Crore Fifty-One Lakh Ninety-Seven Thousand and Five Hundred and Ninety-Nine Only) against which the Corporate Debtor has only made payment of Rs. 27,68,43,905/- (Rupees Twenty-Seven Crore Sixty-Eight Lakh Forty-Three Thousand Nine Hundred and Five Only). Thus, the invoices amounting to Rs. 3,83,53,694/- (Rupees

Three Crore Eighty-Three Lakh Fifty-Three Thousand and Six Hundred and Ninety-Four Only) remain unpaid and the outstanding interest as on 30.06.2022 is Rs. 3,02,56,249/- (Rupees Three Crore Two Lakh Fifty-Six Thousand and Two Hundred and Forty-Nine Only). Hence, the Operational Creditor sent a statutory demand notice dated 27.12.2021 under Section 8 of the Code raising a demand of the then existing unpaid operational debt along with interest amounting to Rs. 6,34,43,492/- (Rupees Six Crore Thirty-Four Lakh Forty-Three Thousand Four Hundred and Ninety-Two Only). It was submitted that the Corporate Debtor did not raise any dispute regarding the outstanding amount and subsequently, the Corporate Debtor on 23.05.2022 made a part payment of Rs. 1,64,850.96/- (Rupees One Lakh Sixty-Four Thousand Eight Hundred Fifty and Ninety-Six Paise) and no further amount was released thereafter.

- 3.7. The relevant details as reflected in Part IV of the Application are reproduced hereunder:

PART IV

PARTICULARS OF OPERATIONAL DEBT

1.	<i>Total amount of debt</i>	<p><i>Total amount: - INR 6,86,09,943/- (Rupees Six Crore Eighty- Six Lakhs Nine Thousand Nine Hundred and Forty- Three Only) including interest @ 18% p.a. as on 30.06.2022.</i></p> <p><i>Principal Amount: - INR 3,83,53,694/- (Rupees Three Crore Eighty- Three Lakhs Fifty- Three Thousand Six Hundred and Ninety- Four Only)</i></p>
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		<i>Interest Amount: - INR 3,02,56,249/- (Rupees Three Crore Two Lakhs Fifty- Six Thousand Two Hundred Forty- Nine Only)</i>			
2.	<i>The date from which such debt fell due</i>	<i>Division</i>	<i>Date</i>	<i>Total Bill Amount</i>	<i>Amount Outstanding</i>
		<i>Jaipur</i>	<i>01.11.2017-06.07.2019</i>	<i>10,61,89,024.00</i>	<i>1,40,43,878.15</i>
		<i>Ajmer</i>	<i>02.12.2017-06.07.2019</i>	<i>5,06,15,549.00</i>	<i>70,08,882.99</i>
		<i>Bharatpur</i>	<i>02.12.2017-06.07.2019</i>	<i>2,20,82,156.00</i>	<i>11,82,479.56</i>
		<i>Bikaner</i>	<i>01.11.2017-06.07.2019</i>	<i>3,29,43,552.00</i>	<i>31,55,358.20</i>
		<i>Kota</i>	<i>02.12.2017-06.07.2019</i>	<i>2,49,49,632.00</i>	<i>25,66,341.76</i>
		<i>Udaipur</i>	<i>02.01.2018-06.07.2019</i>	<i>7,84,17,686.00</i>	<i>1,03,96,753.02</i>
		<i>Total Outstanding</i>		<i>Rs. 3,83,53,694/-</i>	
		<i>Total Interest Amount (@18% p.a.) as on 30.06.2022</i>		<i>Rs. 3,02,56,249/-</i>	
		<i>Total Bill Amount (Outstanding Amount + Interest)</i>		<i>Rs. 6,86,09,943/-</i>	
3.	<i>Amount claimed to be in default and the date on which the default occurred</i>	<i>Total amount in default: - INR 6,86,09,943/- (Rupees Six Crore Eighty- Six Lakhs Nine Thousand Nine Hundred and Forty- Three Only) including interest @ 18% p.a. as on 30.06.2022.</i> <i>Principal Amount: - INR 3,83,53,694/- (Rupees Three Crore Eighty- Three Lakhs Fifty- Three Thousand Six Hundred and Ninety- Four Only)</i> <i>Interest Amount: - INR 3,02,56,249/- (Rupees Three Crore Two Lakhs Fifty- Six Thousand Two Hundred Forty- Nine Only)</i>			

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4. The Corporate Debtor filed Reply *vide* Diary No. 1712/2023 dated 14.07.2023 and made the following submissions:

- 4.1. The Corporate Debtor is a State Government undertaking primarily engaged in the business of sourcing, warehousing, distribution, and pricing of sale of IMFL/ Beer in the State of *Rajasthan*. The Corporate Debtor issued a Tender Notice dated 03.07.2017 bearing No. *RSBCL/Division/Open Bid/2017-18* inviting the online bids to outsource the work of loading and unloading IMFL/ Beer cartons at 40 depots situated in various districts in the State of Rajasthan. The Operational Creditor was awarded the tender of loading and unloading of cartons for the 33 depots out of the 40 depots of the Corporate Debtor. Work orders for every division was issued by the Corporate Debtor and subsequent to that agreements were also executed between the parties.
- 4.2. The alleged operational debt of the Operational Creditor primarily comprises of three elements i.e., Annual Deduction, Penalty on Depot, and Loose Bottles. As per the terms of the work orders, the Operational Creditor was required to submit its plan of action for approval to the Corporate Debtor before starting the work within seven days of the issuance of the work orders. However, even after expiry of seven days since the issuance of the work order, the Operational Creditor failed to submit the plan of action. Thereafter,

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the Corporate Debtor issued a letter bearing no. *F1 ()/RSBCL/2017-18/5751* dated 23.10.2017 to the Operational Creditor to submit its plan of action and start the work.

- 4.3. The Operational Creditor has made delays in commencing the work and started the work at different dates at different division. Thus, the Corporate Debtor deducted certain amount from the invoices of the Operational Creditor on account of penalties and annual charges as per the clauses of the tender document, work orders, and agreements. As per Clause 7(ii) of the agreements, it was agreed that the Corporate Debtor will deduct certain amount as contained in the respective agreements in 12 equal monthly installments as annual charges at the time of making payment to the Operational Creditor. Accordingly, the Corporate Debtor deducted the annual charges from the monthly payments.
- 4.4. Concerning the averment of the Petitioner qua Pro-rate deduction of annual charges, it was submitted that the deduction of annual charges on pro-rata basis is completely against the understanding established between the parties. Further, Clause 7(ii) of the agreements does not provide for pro-rata deduction of the annual charges. Thus, the Corporate Debtor started deducting the amount from the month the Operational Creditor started working at respective depots. Instead of commencing the work immediately after issuance of the work

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orders, the Operational Creditor commenced the work as per his own convenience and now wants the Corporate Debtor to deduct the annual charges on pro-rata basis which is contrary to the understanding between the parties. The same understanding was also set out in the letter sent by the Corporate Debtor to the Operational Creditor dated 12.01.2018.

- 4.5. In relation to the deduction of penalties, it was stated that as per Clause 9 and 10 of the work orders and clause 8(ii), (iii) and (iv) of the agreements, the Operational Creditor was required to unload the cartons of IMFL/ and Beer within 3 hours of vehicle reaching the depot, and further, the IMFL/ Beer was required to be loaded within an hour. As per clause 11 of the work orders, on non-compliance of the aforementioned conditions the Corporate Debtor was entitled to deduct Rs. 1000/- per vehicle for the delay. The Operational Creditor failed to deploy the required number of labour at the depots thereby causing delay in unloading and loading of IMFL/Beer cartons at the vehicle. The Corporate Debtor raised the aforementioned issue with the Operational Creditor which is evident from the various correspondences of the parties for the period of May, 2018 to September, 2018. Further, the Corporate Debtor has various note sheets for every depot containing all the calculations showcasing the rightful deductions towards the amount of penalty. Due to the

copious nature of the note-sheets, they are not filed in the reply but will be produced before this Adjudicating Authority if required.

4.6. The Corporate Debtor rightly deducted the amount of penalty from the amount of invoices payable to the Operational Creditor in consonance with the work orders and the agreements. Accordingly, the alleged operational debt which consisting of excess penalties is neither due and nor payable by the Corporate Debtor to the Operational Creditor. The Operational Creditor ignored the repeated intimations of the Corporate Debtor concerning requisite labour deployment and deduction of penalties. The Operational Creditor approached this Adjudicating Authority by suppressing relevant material that shows existence of a dispute between the Operational Creditor and the Corporate Debtor.

4.7. The alleged Operational Debt also consists of amount pertaining to loose bottles. The Operational Creditor with the intention of extorting money from the Corporate Debtor has wrongfully charged the Corporate Debtor for loose bottles and increased the invoices. As per the terms of the tender, the Operational Creditor was entitled to receive Rs. 2.50 per carton for loading and unloading. In the invoices raised by the Operational Creditor, the loose bottles were charged at Rs. 2.50/- per bottle as compared to the price of Rs. 2.50 of loading and unloading of a carton. Thus, it is irrational to charge a price

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equivalent to that of a carton for a single loose bottle. Further, nothing in this regard was agreed between the parties.

- 4.8. Despite having no obligation for payment of loose bottles, the Corporate Debtor on the request of the Operational Creditor, in good faith, called a meeting on 05.09.2018 wherein it was agreed that the number of loose bottles will be divided by twelve and as per that Rs. 2.50/- per cartons will be paid for loose bottles. The said terms were acknowledged by the Operational Creditor in its letter dated 10.06.2019. Contrary to the aforementioned understanding, the Operational Creditor wrongfully increased the amount of invoices by charging Rs. 2.50/- per loose bottles.
- 4.9. The alleged operational debt is not due and payable as the amount reflected in the invoices was either increased by the Operational Creditor by charging excessive amount for loose bottles or there exists a dispute concerning the penalties or annual charges. Further, all the letters regarding penalties and loose bottles were issued prior to the date of issuance of the demand notice which inter-alia proves pre-existence of a dispute as contained under section 5(6) of the Code.
5. The Operational Creditor filed its Rejoinder *vide* Diary No. 2138/2023 dated 31.08.2023 and made the following submissions:-

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- 5.1. The Operational Creditor denied the existence of any pre-existing dispute as alleged by the Corporate Debtor and contended that the present Petition has been filed for claiming the amount that is due and payable. The Operational Creditor sent several letters to the Corporate Debtor enquiring about the deductions in the payment but the same has not been replied to by the Corporate Debtor. Further, the Corporate Debtor has failed to bring any documents on record to justify the deductions in payment of invoices.
- 5.2. The reliance placed by the Corporate Debtor upon clause 7 (ii) of the agreements is completely misplaced. Clause 7 (ii) of the agreements state that *“And the amount of Goods and Service Tax (GST) will be adjusted after deducting the amount payable every month to the service provider firm for loading and unloading work.”* Thus, the deduction of amount other than the purposes of statutory compliance and general business practice without any intimation to the Petitioner is unreasonable and unfair.
- 5.3. Clause 8(ii) and 8(iii) of the agreements provides for mandatory unloading of the stock of Beer/ IMFL within 3 hours from the time of arrival of vehicle. It was pointed out that the period of three hours for unloading or 1 hour for loading, has to be calculated from placement of the vehicle at the point of loading/unloading as apparent from the letter of the Corporate Debtor dated 18.01.2019.

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Further, penalty clauses in conditions 9 & 10 of the work order can only be invoked if the timeline of three hours for unloading and one hour of loading has been exceeded by the Petitioner after commencement of loading/unloading work as recorded in the minutes of the meeting dated 08.02.2019. Further, the deduction of Rs. 1000 by the Corporate Debtor in pursuance of Clause 8(iv) is also unjustified. The aforesaid deduction was never communicated to the Petitioner.

- 5.4. The Petitioner refuted the allegation of the Corporate Debtor qua shortage of manpower. It was submitted that Corporate Debtor has wrongly relied upon the MIS which has been communicated by the depot to the headquarter and the same cannot be taken as a proof of shortage of manpower. Further, in support of its contentions the Corporate Debtor has relied upon letters dated 12.08.2018 and 16.08.2018. The aforesaid letters were sent to the Petitioners by all the depots in compliance of the internal meeting of the Corporate Debtor. Thus, the objections raised by the Corporate Debtor are completely misplaced. Further, a perusal of the page no. 103 and 108 of the Reply reveals that the delay was caused as the place for unloading the beer cartons was not available and the same cannot be attributed to the Petitioner.

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5.5. The Petitioner charged Rs. 2.50 per bottle for the loose bottles in pursuance of the understanding reached between the parties as apparent from the Bill No. *RAJ/GT/17-18/008* dated 02.12.2017 raised upon *Jaipur* Depot, and *RAJ/GTA/17-18/13* raised upon *Udaipur* depot. The aforesaid bills were cleared by the respective depot in full. Thus, it is evident that the invoices raised by the petitioner for the bottles is as per the agreed charges. It is further submitted that the Petitioner was not part of the meeting held on 05.09.2018 and no such information was ever provided to the Petitioner.

5.6. The Petitioner relied upon the case of *Ahluwalia Contracts (India) Ltd. vs. Raheja Developers Ltd. in Company Appeal (AT) (Ins) 703/2018*, wherein the Hon'ble NCLAT has held that:

Para 18- From the aforesaid decision, it is clear the existence of dispute must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice. If it comes to the notice of the Adjudicating Authority that the 'operational debt' is exceeding Rs. 1 lakh and the application shows that the aforesaid debt is due and payable and has not been paid, in such case, in absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid 'operational debt', the application under Section 9 cannot be rejected and is required to be admitted.

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6. The Operational Creditor filed its written submissions *vide* Diary No. 896/2024 dated 15.04.2024 whereby reiterating the same as mentioned in its petition and rejoinder.
7. We have heard the Ld. Counsels for the parties and perused the averments made in the Petition, Reply, Rejoinder, Written Submission and all the documents enclosed with the Petition.
8. Before we proceed with the facts of the present case, the statutory framework regarding the Application under Section 9 of the Code needs to be recapitulated. An application under Section 9 of the Code can only be filed after the delivery of a demand notice as provided under Section 8 of the Code. Section 8 of the Code requires the Operational Creditor, upon the occurrence of default, to deliver a Demand Notice for unpaid Operational Debt. Furthermore, Section 8(2) specifies that the Corporate Debtor must, within 10 days of receiving the Demand Notice, inform the Operational Creditor of any existing dispute.
9. Under Section 9(1), if Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Sub-section (2) of Section 8, may file an Application under Section 9(1) of the Code.

Section 9(1) is as follows:

“Section 9: Application for initiation of corporate insolvency resolution process by operational creditor.- (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice

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demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.”

Section 9(5)(ii) is as follows:

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—

(i).....

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days(i) of the date of receipt of such notice from the adjudicating Authority.”

10. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon’ble Supreme Court laid down the conditions precedent for triggering the CIRP under Section 9 of the Code. Para 34 is as follows: -

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

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- (i) *Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) *Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) *Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

11. Therefore, to initiate CIRP in the present matter these conditions have to be satisfied. At this juncture it is also important to quote the judgment of the Hon’ble Supreme Court in *M/s S.S. Engineers & Ors. vs. Hindustan Petroleum Corporation Limited*, which reads as follows:

“32. On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”

12. A combined reading of Section 8 and Section 9 of the Code shows that an Operational Creditor can trigger the CIRP when there is an undisputed debt and a default in payment thereof. In the present case the Operational

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Creditor raised invoices of Rs. 31,51,97,599/- (Rupees Thirty-One Crore Fifty-One Lakh Ninety-Seven Thousand and Five Hundred and Ninety-Nine Only) against which the Corporate Debtor has only made payment of Rs. 27,68,43,905/- (Rupees Twenty-Seven Crore Sixty-Eight Lakh Forty-Three Thousand Nine Hundred and Five Only). Thus, it was alleged that the invoices amounting to Rs. 3,83,53,694/- (Rupees Three Crore Eighty-Three Lakh Fifty-Three Thousand and Six Hundred and Ninety-Four Only) remain unpaid and the interest as on 30.06.2022 on the outstanding amount is Rs. 3,02,56,249/- (Rupees Three Crore Two Lakh Fifty-Six Thousand and Two Hundred and Forty-Nine Only).

13. In the present Petition, the Operational Creditor has relied upon various letters wherein it has disputed deduction of the amount made by the Corporate Debtor towards annual deduction. Further, it has been contended that the Annual Deduction should have been made on pro-rata basis. In this regard reference can be made to the letters of the Petitioner addressed to the Corporate Debtor dated 3.01.2018, 10.05.2018, 11.05.2018 and 30.05.2018. The Operational Creditor has also sought clarification and disputed the deduction towards delay in loading and unloading of the vehicles. The Operational Creditor addressed several letters concerning the aforementioned issue to the Corporate Debtor, including the letters dated 31.08.2018, 16.01.2019, 05.03.2019, and 17.06.2019. The Operational Creditor also raised its grievances towards non-payment of the charges

towards loose bottles, reference can be made to the letters dated 30.05.2018, 14.08.2018, and 18.10.2018. Further, the aforesaid dates are not exhaustive in nature and for sake of brevity this Adjudicating Authority is refraining from reproducing the date of each and every letter. The letters were filed with the Petition and are marked as Annexure No. 8 (Colly).

14. The Corporate Debtor in its submissions denied the averments made in the Petition and stated that no amount is due and payable to the Operational Creditor. It was pointed out that the Operational Creditor failed to submit the action plan as required under the work orders. Further, the Operational Creditor did not provide the details about commencement of work at depots and the same has been recorded in its letter dated 23.10.2017. With regard to the annual charges, it was submitted that the Corporate Debtor informed the Operational Creditor *vide* its letter dated 12.01.2018 that as per Clause 7(ii) of the agreements, 12 equally monthly installments will be deducted. Further, due to deficiency of the manpower deployed by the Operational Creditor, there was undue delay in loading and unloading of IMFL/Beer cartons from the vehicles.
15. On account of aforesaid delay, the Corporate Debtor levied penalty upon the Operational Creditor under Clause 11 of the Work Orders and clause 8(v) of the agreements. The penalties imposed and the issue of deficiency of manpower were communicated to the Operational Creditor by the Corporate Debtor through various letter sent between May, 2018 to

September, 2018, and the same are marked as Annexure-4 (Colly) of the Reply. The Corporate Debtor further submitted that the Operational Creditor has inflated the invoices by wrongly charging Rs. 2.50/ per bottle for loose bottles. As per the meeting dated 05.09.2018, it was agreed that the number of loose bottles will be divided by twelve and as per that Rs. 2.50/- per cartons will be paid for loose bottles. The said terms were acknowledged by the Operational Creditor in its letter dated 10.06.2019.

16. The disagreement between the Corporate Debtor and the Operational Creditor as apparent from the record can be broken down into three issues i.e., Annual Deductions, Penalty on Depot, and Loose Bottles. For ease of understanding, the dispute between the parties is tabulated hereunder:-

ISSUE RAISED	CORPORATE DEBTOR'S STAND	OPERATIONAL CREDITOR'S STAND
Annual Deductions	As per clause 7(ii) of the agreement, 12 equally monthly installments were to be charged at the time of making payment to the Operational Creditor.	The deductions should have been made on Pro-rata basis. Further, clause 7(ii) cannot be interpreted in a manner to authorize uniform deduction of charges and no such understanding was reached between the Parties.
Penalty on Depot	Clause 9 and 10 of the work orders, and clause 8(ii), 8(iii), and 8(iv) of the agreement requires unloading of the	The timeline of three hours and one hour as provided in Clause 8 (ii), (iii), and (iv) is to be calculated from the

Sd/-

Sd/-

	IMFL/Beer within 3 hours and loading within an hour of the vehicle reaching the depot. The Operational Creditor failed to adhere to the timeline due to deficiency of manpower and consequently, penalties were levied upon it.	placement of vehicle at the loading/unloading point. Further, penalty can only be levied if the timeline is breached after commencement of loading/unloading.
Loose Bottles	As per the meeting dated 05.09.2018, Rs. 2.50/- per cartoon were to be paid for loose bottles.	For loose bottles, Rs. 2.50 per bottle were to be charged as apparent from bills.

17. A perusal of the record will reveal that the aforementioned disagreements have been subsisting between the parties since 2018. It will be relevant to mention that the notice under Section 8 of the Code was sent by the Operational Creditor to the Corporate Debtor on 27.12.2021. Thus, it appears that the parties were at an impasse on the aforesaid issues much prior to the issuance of Section 8 notice.

18. Thus, in light of the Judicial Pronouncements referred to above and the facts of the case, we are of the opinion that there is a pre-existing dispute between the parties concerning computation of Annual Deductions, Penalties, and prices of loose bottles. Hence, CIRP of the Corporate Debtor cannot be initiated in the instant Petition.

Sd/-

Sd/-

Further, it is clarified that the instant order will not come in the way of parties seeking relief from any other court of law.

In view of the aforementioned observations the C.P. bearing No. 63/9/JPR/2022 stands dismissed and disposed of.


DEEP CHANDRA JOSHI
(JUDICIAL MEMBER)


RAJEEV MEHROTRA
(TECHNICAL MEMBER)