



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH (COURT-II)

IN

COMPANY PETITION IB (IBC)-685/ND/2024

Farukhi Glass Industries

Reg. Office at: Village Dholapura,
Agra Road, Firozabad 283-203,
Uttar Pradesh, India

**...Petitioner/
Operational Creditor**

Versus

Boutique Spirits Brands Pvt. Ltd.

Reg. Office at: Unit No. 418,
DLF Prime Towers, Okhla Phase - 1,
New Delhi 110020

**...Respondent/
Corporate Debtor**

Order delivered on: 08.04.2025

Under Section: 9 of the Insolvency and Bankruptcy Code, 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

MS. REENA SINHA PURI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant: Adv. Aanchal, Adv. Mujadid

ORDER

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

It is the case of the Applicant espoused in the captioned application filed under Section 9 of IBC, 2016 that between December, 2021 to February 2023, the Corporate Debtor placed various purchase orders on the Applicant i.e., Operational Creditor, for supply of empty Glass Bottles. The Operational C.P (IB)-685/ND/2024
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Creditor supplied glass products to the Corporate Debtor at multiple locations based on the Corporate Debtor's specific requirements. Payments for these supplies were to be made within thirty days of delivery.

2. The Operational Creditor raised various invoices on Corporate Debtor for different amounts, as consideration for the supply of glass products. The Corporate Debtor has consistently defaulted in payments since December 2021, as reflected in the ledger account statement maintained by the Operational Creditor. The Operational Creditor maintained a detailed chart of unpaid invoices for different locations where supplies were made and the same is provided as follows:

- a. The amount outstanding for materials supplied at Ranchi, Jharkhand, is Rs. 17,85,787/-, with defaults occurring from October 2022 to February 2023.
- b. The amount outstanding for materials supplied at Odisha stands at Rs. 1,49,77,147/-, where defaults have been ongoing from December 2021 to March 2023.
- c. Similarly, the outstanding dues for materials supplied at Punjab amount to Rs. 16,08,235/-, with defaults recorded from September 2022 to February 2023.

3. The chart of unpaid invoices for respective locations is annexed and marked as Annexure-B. Throughout their business transactions, the Corporate Debtor repeatedly requested urgent deliveries of glass products, assuring that the outstanding dues would be settled. In view of these dues, the Corporate Debtor issued a security cheque dated 07.01.2023, which was



dishonoured on 05.04.2023 due to insufficient funds. The dishonored cheque and the return memo have been annexed and marked as Annexure-E. When the payment was not made, Operational Creditor issued notices to the Corporate Debtor on 23.09.2013 and 21.10.2023 seeking payment of amounts, asking him for clearance of the outstanding receivables from them.

4. Thereafter, a Demand Notice in Form 3, prescribed under Rule 5(1)(a) of the I&B (Application to Adjudicating Authority) Rules, 2016 was served by the Applicant upon the Corporate Debtor. The Operational Creditor issued a Demand Notice under Section 8 of the Code on 15.04.2024, seeking payment of Rs. 1,83,71,169/- along with interest. The said Demand Notice was dispatched to the Corporate Debtor's registered address, which was returned to the sender. However, the notice sent to the alternate address of the Corporate Debtor was successfully delivered. Additionally, the Demand Notice was sent via email on 16.04.2024 to the Corporate Debtor's official email address as available on the MCA portal, as well as to the email addresses of its Key Managerial Personnel. The Demand Notice dated 15.04.2024 is annexed and marked as Annexure-F.

5. Despite continued assurances from the Corporate Debtor, no payments were made, and no further deliveries have been made since March 2023. Consequently, the Operational Creditor issued a second Demand Notice on 17.08.2024, which was again sent to the Corporate Debtor's registered address, but was returned to the sender. However, the notice sent to the alternate address was successfully delivered. The notice was also sent



via email on 17.08.2024 to the official email ID of the Corporate Debtor, as well as the email addresses of its Key Managerial Personnel. The Demand Notice dated 17.08.2024 is annexed and marked as Annexure-G.

6. The affidavit under section 9(3)(b) of the Code found at Annexure-J by Samar Mittal, a partner of Applicant firm, records that the demand notices were served on two occasions dated 15.04.2024 and 17.08.2024 and neither any reply to the said demand notices was given nor any payment of the outstanding amount could be made. Furthermore, the affidavit records that there is no dispute regarding the unpaid operational debt payable to the Operational Creditor and no issues were ever raised by the Corporate Debtor on the delivery and quality of goods supplied to them at various locations.

7. The Information Utility Report confirms that multiple email communications and reminders sent to the Corporate Debtor's registered email address and to its Key Managerial Personnel bounced back, except those addressed to Mr. Hardik Shah, nominee director of the Corporate Debtor. No response has been received, and accordingly, the report records that the default committed by the Corporate Debtor is 'deemed to be authenticated. The Information Utility Report is annexed and marked as Annexure-H.

8. The present application was filed before this Adjudicating Authority on 11.09.2024 and was registered as C.P. (IB) No. 685/ND/2024. Notice was issued to the Corporate Debtor on 02.12.2024, with a direction to the Applicant to file an Affidavit of Service. The Affidavit of Service was filed on 03.01.2024 vide filing no. 0710102094372024/2, on 17.01.2024 with filing



no. 0710102094372024/3. and thereafter on 07.03.2024 with filing no. 0710102078352024/1, with a physical copy also handed over to this Bench.

The Operational Creditor has served the copy of the application and the order dated 02.12.2024 on three occasions upon the Corporate Debtor's registered and alternate addresses through speed post, registered post, courier, and email. The parcels sent to the registered address were returned, while those sent to the alternate address were successfully delivered on all three occasions. The emails sent to the registered email address of the Corporate Debtor and its Key Managerial Personnel bounced back, except those addressed to Mr. Hardik Shah, nominee director of the Corporate Debtor. Despite due service, the Respondents failed to appear on 03.01.2025, necessitating the filing of a fresh Affidavit of Service being filed on 17.01.2024.

On 20.02.2025, as the Respondents once again failed to appear, the Tribunal set the proceedings ex-parte and directed the filing of another Affidavit of Service, which was duly submitted on 07.03.2024. On the same date, the Tribunal heard the counsel for the Applicant and reserved the order. It is submitted that throughout the course of business, all communications were conducted through calls and using the same email addresses. However, since the default began accruing, all emails to the Corporate Debtor have been bouncing back, and the Corporate Debtor has ceased responding to calls. This deliberate avoidance of communication clearly indicates an attempt by the Corporate Debtor to evade its financial obligations.



9. That the Corporate Debtor/Respondent has defaulted to pay an amount of Rs. 1,83,71,169/- to OC, which is beyond the threshold limit of Rs. 1 crore stipulated in Section 4 of IBC, 2016 and no reply to the demand notice has been given by the Corporate Debtor. Part IV of the application reads thus:

PART -IV		
PARTICULARS OF OPERATIONAL DEBT		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM	A principal amount of Rs. 1,83,71,169/- (Rupees One Crore Eighty Three Lakh Seventy One Thousand One Hundred and Sixty Nine) is due and payable towards supply of empty glass bottles by the Operational Creditor to the
	WHICH SUCH DEBT FELL DUE	Corporate Debtor. Products have been supplied and invoices have been raised by the Operational Creditor. However, the Corporate Debtor has consistently defaulted in making payments. As the Operational Creditor is registered under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act), the Corporate Debtor is also liable to pay compound interest in accordance with law for the delay in



		<p>making payments.</p> <p>The default is still continuing.</p> <p>i) The Operational Creditor is <i>inter alia</i> engaged in the business of supplying glass products.</p> <p>ii) The Corporate Debtor is engaged in the business of manufacturing branded alcohol beverages in India.</p> <p>iii) The Operational Creditor supplied empty glass bottles to the Corporate Debtor at its various locations in Punjab, Goa, Andhra Pradesh, Jharkhand and Odisha. Invoices were raised by the Operational Creditor for the products supplied to the Corporate Debtor on a regular basis. However, despite multiple requests the Corporate Debtor has always been reluctant to make payments. Payments were required to be made within 30</p>



		<p>days of delivery. There is no dispute with regard to the fact that products have been delivered to the satisfaction of the Corporate Debtor.</p> <p>iv) As per the practice followed between the parties, the Corporate Debtor would issue post-dated cheques to the Operational Creditor on a regular basis, which would be</p>
		<p>encashed by the Operational Creditor as and when required.</p> <p>v) As no payments were being received by the Corporate Debtor, the Operational Creditor presented a security cheque dated 07.01.2023 for Rs. 50,00,000/- given by the Corporate Debtor. However, the cheque was dishonoured for insufficiency of funds vide dishonour memo dated 05.04.2023.</p>



		<p>vi) The supply of various products by the Operational Creditor to the Corporate Debtor was made till February 2023. However, no amounts have been received from the Corporate Debtor after January 2023 despite multiple requests on part of the Operational Creditor. True copy of a list of unpaid invoices along with the invoices are annexed herewith and marked as <u>Annexure C.</u></p> <p>True copy of Ledger Accounts maintained by the Operational Creditor are annexed herewith and marked as <u>Annexure D.</u></p> <p>True copy of cheque dated 07.01.2023 along with dishonour memo dated 05.04.2023 is annexed herewith and marked as <u>Annexure E(Colly).</u></p>
		<p>vii) Despite multiple requests to make payments no further payments have been made by</p>



		<p>the Corporate Debtor.</p> <p>viii) The Operational Creditor has also previously issued notices to the Corporate Debtor on 23.09.2023 and 21.10.2023 seeking payment of amounts. Despite due delivery of notices, no response has been received by the Operational Creditor till date.</p> <p>ix) Operational Creditor is registered under the MSMED Act. As such, Corporate Debtor is required to pay compound interest (on the basis of the prevailing bank rate) on the amounts due. Operational Creditor issued a Demand Notice dated 15.04.2024 to the Corporate Debtor under Section 8 of the Code seeking payment of a principal amount of Rs. 1,83,71,169/- along with interest at the registered address as well as another</p>
		<p>address available with the Operational Creditor. While the notice sent at the registered office of the Corporate Debtor was returned with remark 'left', the notice sent at the other address has been successfully delivered. The Demand Notice has also been sent via email at the email address of the Corporate Debtor, as available on the</p>



		<p>MCA portal i.e., board@bsbrands.co.in and at the email addresses of various key managerial personnel of the Corporate Debtor on 16.04.2024 and has been successfully delivered True Copy of the Demand Notice dated 15.04.2024 along with original postal receipt, tracking report of the same and copy of email sent to the Corporate Debtor on behalf of the Operational Creditor is annexed herewith and marked as Annexure F (Colly).</p>
		<p>x) Subsequently, another Demand Notice was issued by the Operational Creditor on 17.08.2024 under Section 8 of the Code at the registered address as well as another address available with the Operational Creditor. This notice was similarly dispatched to the Corporate</p>



	<p>Debtor's email address as available on the MCA portal i.e., board@bsbrands.co.in, and to the email addresses of various key managerial personnel on 17.08.2024. The Notice was also sent through post to the registered office of the Corporate Debtor which was returned with the remark 'left'. The notice sent at the other address has also returned with the remark 'left' on 28.08.2024. True Copy of the Demand Notice dated 17.08.2024 along with original postal receipt, tracking report of the same and a copy of email sent to the Corporate Debtor on behalf of the Operational Creditor is annexed herewith and marked as Annexure G (Colly).</p> <p>xi) As per the report of the Information Utility, numerous emails and reminders were</p>
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		<p>sent at the registered email address of the Corporate Debtor, as reflected on the records of the Ministry of Corporate Affairs (MCA) portal, as well as to various key managerial personnel. However, the communications, except those addressed to Mr. Hardik Shah, Nominee Director of the Corporate Debtor, were undelivered or resulted in email bounce notifications. The email sent to Mr. Hardik Shah was successfully delivered and opened. However, no response to the said email has been received till date. True copy of the Information Utility report is herewith annexed as Annexure H.</p> <p>xii) No payments have been received by the Operational Creditor from the Corporate</p>
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		<p>Debtor so far despite delivery of demand notice. No reply to the demand notice has also been received from the Corporate Debtor.</p> <p>xiii) There is no bonafide dispute between the parties. Further, there is no scope for any bonafide dispute as delivery has been taken by the Corporate Debtor each time.</p> <p>xiv) Accordingly, the Corporate Debtor has defaulted in making payments and insolvency resolution process is liable to be commenced in respect of the Corporate Debtor.</p>
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS	<p>A principal amount of Rs. 1,83,71,169/- (Rupees One Crore Eighty Three Lakh Seventy One Thousand One Hundred and Sixty Nine) is due and payable towards supply of empty glass bottles by the Operational Creditor to the Corporate Debtor. As the</p>



OF TABULAR FORM)	IN	Operational Creditor is registered under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act), the Corporate Debtor is also liable to pay compound interest in accordance with law. The default is still continuing Chart showing amounts due to be paid by the Corporate Debtor to the Operational Creditor is annexed as Annexure B
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10. The reading of Section 9(5) of IBC, 2016 would reveal that if it is found by this Tribunal that the Operational Creditor could raise invoices demanding the operational debt, and a demand notice is found to be served by it and the application is complete, in the event of there being no disciplinary action pending against the RP suggested by the Operational Creditor, this Tribunal may admit the application. Section 9(5) of IBC, 2016 reads thus:

“9. Application for initiation of corporate insolvency resolution process by operational creditor. –

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order–

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

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

(b) there is no payment of the unpaid operational debt;



(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(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 subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.”

11. As the CD did not file any reply either to Demand Notice or to this application, there is no material before us to suggest any pre-existing dispute between the parties. Regarding the status of RP, the Applicant has not suggested the name of any IP to be appointed as IRP. Apparently, the OC has casual approach towards the matter. Though, when no IP is proposed by the Operational Creditor for being appointed as IRP, this Tribunal may reserve



to process under Section 60(3)(b) of IBC, 2016, but in the present case, when on the one hand, the Applicant is not able to trace the Corporate Debtor to serve the notice, on the other hand it has also not placed on record any financial contract between the parties regarding the sale and supply of empty glass bottles. We are also unable to appreciate that when the registered office of the Applicant is in UP and that of CD is in Punjab, how the present application is amenable to jurisdiction of this Tribunal. Though, in the memo of parties, the address of the CD is also shown as 418, DLF, Prime Towers, Okhla Phase-I, New Delhi-110020, all the invoices as raised at the addresses/offices of the CD at Jaithpur, Sambalpur-768112 or at Ropar, Punjab-140108. Even, in the memo of parties, in addition to, the aforementioned address, the address of CD at Village Purkhali, District Ropar, Punjab-140108 has also been mentioned. Section 8(1) of IBC, 2016, provides that an OC need to deliver notice to the CD. The non-delivery of notice as above would vitiate the application. In the present case, the Applicant has not delivered the Demand Notice at the registered office of the CD. However, there is a stand taken in the application that the notice could be delivered at alternate address. There being no appearance on behalf of the CD, no concrete material is available before us to arrive at definite conclusion regarding delivery of Demand Notice at alternate address. In any case, when Section 9(5)(c) of IBC, 2016, provides that the Adjudicating Authority shall admit the application preferred under Section 9(2) of IBC, 2016, if the invoice or notice for payment to the Corporate Debtor has been delivered by the Operational Creditor. In the present case, it is the plea raised by the Applicant that it could raise invoice upon the CD. However, we are unable to



comprehend that when the payment against the invoices raised from 01.12.2021 till March 2023 was not made, how the Applicant could raise the Demand Notice only on 15.04.2024. It is seen from the invoices that the Applicant was liable to pay CGST and GST @ 9% each. However, the Applicant has not placed on record the copies of GSTR-1 and GSTR-3B. When it is the case of the Applicant that the goods were supplied at distant places, no e-way bills are placed on record. It is nowhere the case of the Applicant that it was not registered with GST. In terms of Regulation 2B of IBBI (CIRP) Regulation, 2016, the Operational Creditor should along with application under Section 9 of IBC, 2016, the Applicant should enclose with the application the Form GSTR-1 and GSTR-3B. Apparently, either the Applicant could have pleaded that it was not registered with GST or CGST or could have pleaded that it had not raised an invoice and only document relied upon by him was Demand Notice. However, once the Applicant raised invoices and made reference in the invoices about GST and CGST it ought to have placed on record the documents in compliance with Regulation 2B of aforementioned regulation. Once, in clause xiii of Part-IV of the application the Applicant has taken a stand that there is no dispute raised by the CD, it is also expected to make averment regarding compliance of Regulation 2B (ibid). We may also be not oblivious of the fact that when in the calculation sheet the default alleged is qua the years 2022 and 2023, a sizable number of invoices placed on record pertained to the year 2021. Though, it is the case of the Applicant that the default was reported to the IU. However, the reliability of the IU is only such that the debt is not disputed by the CD, on service of notice. In the present case, the CD has not even replied to the



Demand Notice. It has not even chosen to appear before this Tribunal. In the wake of the approach and attitude of the CD, we may also not rule out the possibility of collusion between the Applicant and the CD. In the totality of the facts and circumstances, particularly, for non-compliance of Regulation 2B of the aforementioned regulations, we are not inclined to admit the application and the same is accordingly rejected.

Sd/-
(REENA SINHA PURI)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)