IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH - V

C.P. (I.B) No. 123/MB/2021

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

In the matter of

Intercon Real Estate Developers Private Limited

Having its registered office at 44, Khatau Building, Office Nos. 23/26 and 27/29 2nd Floor, Nyaymurti G.N. Vaidya Marg, Fort, Mumbai- 400001

......Petitioner/Operational Creditor

Vs

Brewcrafts Micro Brewing Private Limited

Having its registered address at First Brewhouse, The Corinthians Club, Mohammadwadi Pune – 411060

.......Corporate Debtor

Order Dated: 17.05.2023

Coram:

Shri Kuldip Kumar Kareer, Hon'ble Member (Judicial)
Smt. Anuradha Sanjay Bhatia, Hon'ble Member(Technical)

Appearances (*Via Videoconferencing*):

For the Petitioner: Mr. Yash Dhruva a/w Mr. Nishit Dhruva, Mr. Prakash Shinde, Mr. Meghna Arvind & Mr. Astha Ojha, counsels i/b MDP & Partners

For the Corporate Debtor: None Appeared.

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company Petition is filed by Intercon Real Estate Developers Private Limited (hereinafter referred as "**the Petitioner/Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as **"CIRP"**) against **Brewcrafts Micro Brewing Private Limited** (hereinafter called "**Corporate Debtor**") by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called "**Code**") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs. 1,21,32,965/-**.

Brief Facts:-

2. The Petition reveals that the Corporate Debtor had entered into a Leave and License Agreement dated 13th April 2016 ("**Leave and License Agreement**") with Intercon Real Estate Developers Private Limited, for the purpose of using 1,634 Sq. Feet carpet area, on the First Floor of Kwality House Building, Plot No.2, Gamdevi Estate, Building No.1-3-5, N. S. Patkar Marg, Mumbai – 400036 (hereinafter referred to as the said "**Premises**") for the period of 5 (five) years beginning from 05.05.2016 till 04.05.2021.

3. As per the terms of the Leave and License Agreement dated 13.04.2016, the Corporate Debtor had agreed to pay the License Fee on the 5th day of every month in advance along with Common Area Electricity and Maintenance ("**CAM charges**") and in case of

delay in payment of the License Fee, the Corporate Debtor had agreed to pay the same, along with the interest at 18% per annum from the due date till repayment. The relevant extract of the clause from the Leave and License agreement dated 13.04.2016 are as under:

*"2. **LICENSE FEE AND OTHER CHARGES**:*

*2.1 In consideration of the License hereby granted to use and occupy the Premises, the Licensee shall Pay to the Licensor, license fees as set out herein on the 5th day of every month in advance beginning from May 10, 2016 ("**License Fee Commencement Date**"). The Parties agree that the License Fee only for the months of May 2016; June 2016; July 2016 and August 2016 shall be paid on the 10th of the respective month in advance;*

*2.2. The Licensee shall pay a lump sum license fee of Rs. 5,00,000 (Rupees Five Lakh only) per month plus service tax and all other applicable taxes and levies, maintenance charges etc. thereon less tax deduction at source at the applicable rate starting from the License Fee Commencement Date ("**the License Fee**"). The Licensee shall furnish to the Licensor the relevant TDS Certificate within the time prescribed under law.*

2.3. The License Fee is subject to an escalation of 5% every year from the License Commencement Date, calculated on the basis of the last paid License Fee.

*2.4. The Licensee shall pay charges towards common area electricity and maintenance ("**CAMCharges**") of Rs. 15,000 per month over and above the License Fee, payable at simultaneously along with the License Fee.*

2.5. In case of delay in payment of License Fee and /or CAM Charges and / or any other charges/ taxes payable by the Licensee under this Agreement, the Licensee shall be liable to pay interest @ 18% p.a. from the due date till date of payment. If the Licensee is in arrears of License Fee and / or CAM Charges and / or any other charges / taxes payable by the Licensee under this Agreement for any two months during the License Period, then the consequences of default as set out in Clause 10 herein shall apply"

4. It is further submitted that the Operational Creditor had issued several Debit Notes from the month of November, 2018 till March, 2019. However, the Corporate Debtor had failed to pay the same. The date of the default mentioned in Part -IV of the Company Petition No. 123 of 2021 is 06.11.2018. The Corporate Debtor had failed to pay the total outstanding claim of Rs. 1,21,32,965/- which includes:

    a) Rs. Rs.72,11,896- (Outstanding License Fees for the period from January 2020 onwards) plus interest @18% per annum from the due date till repayment.

    b) Rs. 29,95233 (Outstanding License Fees amount for the year 2018-2019)

    c) Rs. 5,39,142/- (Interest on the outstanding License Fee for the year 2018-2019)

    d) Rs. 13,86,694/- (Failure to pay Tax Deducted at Source for the Financial Year 2018-19 and 2019-20)

5. Thereafter, the Operational Creditor issued a Demand Notice dated 21.12.2020 in Form 3, under Rule 5, of the Insolvency and

Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with copies of the particulars of claim, copies of Debit note for the months of November, 2018 till March, 2019 and the copies of the Debit Notes for the months of January, 2020 till October, 2020. The Petitioner states that the said notice has been duly received by the Corporate Debtor, but the Corporate Debtor has failed to make any payment. Hence this Petition.

FINDINGS:

6. We have heard the Counsel for the Petitioner and perused the material available on record.

7. It is an undisputed fact that the Corporate Debtor has entered into a Leave and License Agreement dated 13th April 2016 ("**Leave and License Agreement**") with the Petitioner and the Corporate Debtor had agreed to pay the License Fee on the 5th day of every month in advance along with common area electricity and maintenance ("**CAM charges**"). Pursuant to the said Leave and License Agreement, dated 13.04.2016, the Petitioner had issued the Debit Notes from November 2018 till March 2019, to the Corporate Debtor, the details of which are annexed as "*Annexure 7*" in the present company petition. The extract of the same are as follows:

(DEBIT NOTES FOR THE MONTH OF NOVEMBER 2018 TILL MARCH 2019)

Sr. No.	**Date**	**Particulars of Debit Note**	**License Fees**	**CAM**
1.	01.11.2018	Debit Note No. 062 & Debit Note No. 063	6,50,476.00	17,700.00

2.	01.12.2018	Debit Note No. 070 & Debit Note No. 071	6,50,476.00	17,700.00
3.	02.01.2019	Debit Note No. 078 & Debit Note No. 079	6,50,476.00	17,700.00
4.	01.02.2019	Debit Note No. 086 & Debit Note No. 087	6,50,476.00	17,700.00
5.	01.03.2019	Debit Note No. 094 & Debit Note No. 095	6,50,476.00	17,700.00

From the above extract, it can be observed that the first debit note was issued on 01.11.2018 and as per the Leave and License agreement dated 13.04.2016, the Corporate Debtor had agreed to pay the License Fee on the 5th day of every month in advance along with common area electricity and maintenance ("**CAM charges**"). Therefore, the debt falls due on 06.11.2018 and the same has been reflected in the Part -IV of the Company Petition as the date of default. Further, **the Petition was filed on 19.01.2021, which is well within the period of limitation.**

It has been further observed by this Bench that the Petitioner has annexed its bank statement in "*Annexure 6*" of the Company Petition, for the Period 01.01.2020 till 31.12.2020, which reflects the last payment made by the Corporate Debtor was on 03.01.2020.

8. The Petitioner has served a demand notice on 21.12.2020, in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, on the Corporate Debtor but the latter failed to respond to the said demand notice.

9. After going through the submissions made by the Learned Counsel for the Petitioner, it is observed by this Bench that vide order dated 31.03.2022, an opportunity was afforded to the Corporate Debtor to remain present on the next date of hearing, failing which, ex-parte proceedings were to be initiated. However, none appeared on behalf of the Corporate Debtor and accordingly, **the Corporate Debtor is proceeded Ex-Parte.**

10. Since, the Corporate Debtor did not file any reply, the claim of Petitioner remained uncontroverted. Therefore the Petitioner has successfully demonstrated the existence of **"debt"** and **"default"** committed by the Corporate Debtor and the Company Petition satisfies all legal requirements for admission. Considering the above facts, we are of the view that this Petition deserves to be **admitted**. It is ordered accordingly in following terms:

ORDER

a. The above Company Petition No. 123/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered **Brewcrafts Micro Brewing Private Limited**

b. **Mr. Jignesh Shah**, having registration No. IBBI/IPA-001/IP-P-02054/2020-2021/13182, having email Id- jkshah555@Hotmail.com, having Mobile Number: 9892038022, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Operational Creditor shall deposit an amount of **Rs. 2 Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, CP 123 of 2021 is **admitted**.

SD/-	**SD/-**
ANURADHA SANJAY BHATIA	**KULDIP KUMAR KAREER**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**