

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (Court-II)

(IB)-2124(ND)2019

IN THE MATTER OF:

**M/s. Indospirit Marketing Private Limited
B-230, Okhla Phase 1
New Delhi-110020**

...Operational Creditor

VERSUS

**M/s Lakeforest Wines Private Limited
E-186, Basement, Greater Kailash-1
New Delhi- 110048**

... Corporate Debtor

Section: 9 of IBC, 2016

Judgement Delivered on: 13.02.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Mr. Anand Shankar Jha, Advocate

For the Respondent : Mr. Mohit Khanna, Advocate



JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Indospirit Marketing Pvt. Ltd. through its Authorized Representative Mr. Sachin Srivastav (for brevity 'Operational Creditor'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Lakeforest Wines Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, M/s Indospirit Marketing Pvt. Ltd. is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. U51228DL2014PTC262950, having its registered office at B-230, Okhla Phase-I, New Delhi-110020.

3. The Corporate Debtor namely, M/s. Lakeforest Wines Pvt. Ltd. is a Company incorporated on 02.08.2005 under the provisions of Companies Act, 1956 with CIN No. U51909DL2005PTC139231, having its registered Office at E-186, Basement, Greater Kailash-I, New Delhi-110048.



4. The Authorized Share Capital of the Respondent Company is Rs.1,51,00,000 and its Paid-up Share Capital is Rs.1,51,00,000 as per the Master Data of the Company annexed.

5. It is submitted by the Operational Creditor that it had entered into a sale purchase arrangement with the Corporate Debtor for supply of liquor products. The Corporate Debtor used to place purchase orders and accordingly, the Operational Creditor used to supply the goods by raising invoices against the same.

6. The details of transactions between the Parties as averred are reproduced below :

Purchase Order No.	Invoice No.	Date	Amount (Rs)
PO030216029919	2907	04.02.2016	6,06,314.63
PO030216030382	2908	04.02.2016	42,804.88
PO050216032933	2954	06.02.2016	37,258.47
PO060216033400	2966	06.02.2016	15,603.91
PO060216033406	2967	06.02.2016	23,385.58
PO080216034655	2989	08.02.2016	75,050.20
PO100216037178	3035	10.02.2016	41,241.67
PO190216046960	3276	19.02.2016	43,862.16
PO190216046802	3277	19.02.2016	14,173.84
PO200216047559	3302 & 3532	20.02.2016 & 01.03.2016	28,536.59 & 17,443.78
PO070316063293	3643	08.03.2016	2,13,012.53
PO090316065414	3659	09.03.2016	3,24,069.12
PO090316065525	3660	09.03.2016	42,804.88
PO090316065529	3661	09.03.2016	65,793.22
PO150316072566	3804	18.03.2016	1,52,261.20
PO220316087296	3962	26.03.2016	84,046.55
PO300316096302	4034	31.03.2016	8,35,548.13



7. It is submitted by the Operational Creditor that the last payment made by the Corporate Debtor is of Rs. 5,00,000 on 29.08.2016.

8. It is stated by the Operational Creditor that the total debt of the Corporate Debtor comes to Rs.20,05,013.84, for which it had sent a Demand Notice dated 09.08.2019 under Section 8 of IBC 2016 vide Speed Post at the Registered Office of the Corporate Debtor. The same was delivered on 13.08.2019. It is further submitted by the Operational Creditor that the Corporate Debtor had not replied to the demand notice. The same has been averred by Operational Creditor in its Affidavit filed under Section 9(3)(b) of IBC, 2016. Further, the Operational Creditor has annexed the Bank Statements issued by HDFC Bank in compliance of Section 9(3)(c) of IBC 2016.

9. That the Corporate Debtor has filed its reply on 12.07.2019 and has raised mainly the following 3 objections :

a) The payment/adjustments towards the claim of the Operational Creditor made by the manufacturing company, namely, M/s. Pernod India Pvt. Ltd.,

b) The claim of the Operational Creditor is barred by Limitation, since the last invoice bearing No. 4304 raised by the Operational Creditor against the Purchase order No. PO30031609302 is of 31.03.2016, and

c) The Operational Creditor has concealed the fact of receipt of notice of dispute in its Affidavit under Section 9(3)(b) of IBC 2016.



10. That on 31.01.2019, this Bench had directed both the Parties to obtain a Certificate from M/s Pernod Ricard India Pvt. Ltd. as to whether any payment towards the debt in question has been made by them to the Operational Creditor or not. On 03.02.2020, the Operational Creditor placed a Certificate from M/s Pernod Ricard Pvt. Ltd. before this Bench, which is reproduced below :


Pernod Ricard India (P) Limited



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TO WHOMSOEVER IT MAY CONCERN

M/s Indospirit Marketing Private Limited had raised a claim upon us (M/s Pernod Ricard India Private Limited) on 08.11.2016 for an amount of Rs. 20,05,013.84/- ("Dues") towards goods supplied by them to M/s. Lakeforest Wines Private Limited (Formerly M/s HillStone Impex Pvt Ltd) as it failed to pay the aforesaid outstanding dues.

This is to certify that we have not paid any amount towards the aforesaid Dues to M/s Indospirit Marketing Private Limited.

For M/s Pernod Ricard India Private Limited

For Indospirit Marketing Private Limited

Authorized Signatory

5th Floor, D-3, District Centre, Saket, New Delhi - 110 017, India
Telephone : 91 (011) 4966 6350 / 4966 6372 - Fax : 91 (011) 4966 6375
Registered Office : 5th Floor, D-3, District Centre, Saket, New Delhi - 110 017
CIN : U74899DL1993PTC055062 - e-mail : info.india@pernod-ricard.com
www.pernod-ricard-india.com

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11. After going through the pleadings, documents placed on record by both the parties and submissions, this Bench is of the view that the plea raised by the Corporate Debtor regarding the payment/ adjustment made by M/s Pernod Ricard India Pvt. Ltd. to the Corporate Debtor does not merit consideration as the Corporate Debtor could not place a Certificate or any other proof regarding payment of the debt in question to the Operational Creditor. On the contrary, the Operational Creditor submitted a Certificate issued by M/s Pernod Ricard India Pvt. Ltd. stating clearly that they have not paid any amount towards the debt in question to the Operational Creditor namely, M/s Indospirit Marketing Pvt. Ltd.

12. As regard the issue of Limitation, the Operational Creditor has been able to show from its Ledger and Bank Statement that the receipt of the last part payment of Rs.5,00,000 from the Corporate Debtor was on 29.08.2016. Further, on clarification sought by this Bench, the Operational Creditor has submitted that the petition was e-filed on the NCLT Portal on 28.08.2019, though the physical petition was diarized in the Registry on 30.08.2019. In support of its contention, the Operational Creditor has submitted a copy of the email received from the email id of NCLT viz, e-filing@nclt.gov.in, a copy of which is reproduced below :



From:
Sent:
To:
Subject:

e-filing@nclt.gov.in
Wednesday, August 28, 2019 2:31 PM
hemant.uppal@indospirlt.com
Notification of Submission of Application/Petition at NCLT (New Delhi)

S

Case titled Indospirit marketing Private Limited Vs. Lakeforest Wines Private Limited is filed at NCLT (New Delhi) with diary number is: 0710102116712019. Matter shall be listed before the bench subject to scrutiny/defect free. To view the document use URL: <https://efiling.nclt.gov.in/searchEFile.drt> and Security Key: FMwynQOupx



This Bench further observes that vide Office Order dated 23.10.2018, of NCLT, New Delhi, it is necessary to upload an Application/ Petition/ Appeal/ Reply etc. online and the concerned party is required to file e-filing receipt along with two complete sets in hard copy. The copy of Office order dated 23.10.2018 is reproduced below :



राष्ट्रीय कम्पनी विधि अधिकरण / NATIONAL COMPANY LAW TRIBUNAL

एन एल ट्रायल-3,
बी. जी. ब्लॉक, लोधी रोड, लॉकी 45,
6th Floor, Block-3,
CGO Complex, Lodhi Road,
नई दिल्ली / New Delhi- 110003
दिनांक / Dated: 1st November, 2018

NOTICE

Reference notice dated 23.10.2018 and presentation made on 25.10.2018 regarding e-filing at NCLT, New Delhi.

The National Company Law Tribunal, New Delhi is now ready to start e-filing. Therefore, all concerned are hereby requested to file application/petition/appeal/ reply etc. online through NCLT e-filing portal w.e.f. 1.11.2018. The URL for the same is available on NCLT website (www.nclt.gov.in).

All concerned are also requested to file two complete sets (legal size) in hard copy before the filling counter NCLT, New Delhi alongwith the e-filing receipt.

It shall be ensured that the application/petition/appeal/ reply etc. uploaded while filling online are the same documents as filed in hard copy.


(Shiv Kam Bairwa)
Registrar

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Hence, the proof in support of e-filing of the present Petition on 28.08.2019 clearly makes the Application within limitation.

13. As regards, the objection regarding the concealment of notice of dispute by the Operational Creditor in the Affidavit filed under Section 9(3)(b), it is noticed that the Operational Creditor had filed Additional Documents on 17.09.2019, wherein the Notice of Dispute dated 23.08.2019 is accompanied by an Affidavit. As a matter of the fact, the Notice of the Petition was issued to the Corporate Debtor thereafter on 09.10.2019. Hence, the notice of dispute was brought to the knowledge of this Bench before issuing of notice of the present Petition to the Corporate Debtor.

14. In the given facts and circumstances, the present Petition being complete and having established the default in payment of the Operational Debt beyond doubt, the Operational Creditor is entitled to claim its dues. The amount of default being above Rs.1,00,000 for the unpaid invoice, the Petition is admitted in terms of Section 9(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:



- “(a) 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;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

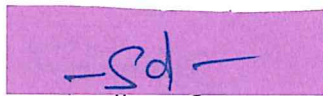
15. The Operational Creditor has not proposed any IRP. Therefore, this Bench based on the list furnished by IBBI, appoints Mr. Mukesh Kumar Grover as an IRP, having IBBI Registration No. IBBI/IPA-001/IP-P00383/2017-18/10640 (Email: mukesh@mjra.co.in subject to the condition that no disciplinary proceedings are pending against the IRP named and disclosures as required under IBBI Regulations, 2016 are made within a period of one week from this Order. The IRP is directed to take the steps as mandated under this Code specifically under Section 17, 18, 20 and 21 of IBC, 2016.



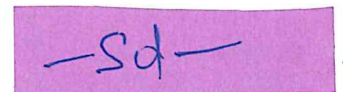
16. The Operational Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

17. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.

18. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)