

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**C.P. (IB) 388/2018**

Under section 9 of the IBC, 2016

**In the matter of:**

**Crown Tobacco Company Pvt. Ltd.**

CIN No. U1600MH1994PTC076275

Everest, 56, Chapel Road,

Bandra West Mumbai-400050

...Petitioner

versus

**Crale Foodlink Pvt. Ltd.**

CIN No. U55201MH2006PTC164133

301/3<sup>rd</sup> Floor, Safal Pride, Sion Trombay Road,

Deonar, Mumbai-400088

... Corporate Debtor

**Order delivered on: 21.09.2020**

**Coram:** Hon'ble Shri. Venkata Subba Rao Hari, Member (Judicial)

Hon'ble Shri. Shyam Babu Gautam, Member (Technical)

**For the Operational Creditor:** Mr. DB Pereira, Mr. Rinika Jain, Advocates  
i/b Mr. DJ Lulia, Advocate

**For the Corporate Debtor:** Mr. RJ Periera, Advocate a/w Wajid I Shaikh

**For the Intervener:** Kunal Mehta

***Per: Venkata Subba Rao Hari, Member (Judicial)***

**ORDER**

1. This Company Petition is filed by Crown Tobacco Company Pvt. Ltd. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Crale Foodlink Pvt. Ltd (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the extent of Rs.35,52,022/- on the delay in making payment by invoking the provisions of Sections 8 & 9 of Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**BRIEF FACTS OF THE CASE:****Contentions raised by the Petitioner:**

2. The Petitioner submits that he has entered into a Business Conducting Agreement dated 29.04.2010 with the Corporate Debtor for running a Restaurant, Bar and Lounge Business on the structure at 9, St. John Baptist Road, Bandra (W), Mumbai 400 050. The said Agreement expired on 30.09.2017, pursuant to which the Corporate Debtor discontinued the said business and handed over possession of the said premises to the Petitioner on 01.10.2017. As on 30.09.2017, the Corporate Debtor was liable to pay a total amount aggregating to a sum of Rs. 35,52,022/-, which included rent, municipal assessment bills, electricity bill, water bill.
3. The Business Conducting Agreement and the two Supplemental Agreements are signed by all the Directors of both the Petitioner and the Corporate Debtor. The Business Conducting Agreement and the two Supplemental Agreements expired with efflux of time on 30.09.2017.
4. Post expiry of the said Agreements, the Operational Creditor has raised the issue of outstanding debt repeatedly with the Corporate Debtor. The Petitioner by their letter dated 01.10.2017, called upon the Corporate Debtor to pay the aforesaid outstanding of Rs. 35,52,022/-. However, no payment was made by the Corporate Debtor. Thereafter, two more reminder letters were sent to the Corporate Debtor dated 08.11.2017 and 24.11.2017.
5. Further, it is brought to our attention by the Petitioner that there is a Civil Suit pending before the Small Causes Court, Bandra bearing RAD Suit No. 348 of 2017, filed by three private individuals in their personal capacity claiming tenancy rights in the premises in which the business was conducted under the said agreement. Another Commercial Suit No. 187 of 2018 was filed by three private individuals before the High Court, Bombay under section 6 of the Specific Relief Act, 1963, claiming possession of the said premises in which the business of Restaurant, Bar and Lounge was conducted.

6. The Petitioner thereafter, issued a Form 3 Notice, dated 19.02.2018 calling upon the Corporate Debtor to settle down the Claims. A reply to the said notice was issued by two of the Directors of the Corporate Debtor namely Mrs Leonys Pereira & Mr. Craig Pereira denying the claim raised by the Petitioner.

**Contentions raised by Mr. Sanjay Vazirani & Mrs. Jyoti Vazirani (Director 1 & 2 Of Corporate Debtor):**

7. A reply was filed by Mr. Sanjay Vazirani and Mrs. Jyoti Vazirani (hereinafter referred to as "The Vaziranis", who own 50% share capital of the company. The Vazirani's point out that there were several disagreements and differences between them and the other directors and that was a reason that the Corporate Debtor's company was not able to continue business activities with them.
8. In their reply the Vaziranis have acknowledged that the conducting fees and water bills for the months of August and September 2017 were not paid and electricity bill for September 2017 was not paid. The reply also accepts that the property tax 01.06.2010 to 30.09.2017 is also due and payable. In his reply therefore, the Vaziranis have candidly acknowledged a debt due payable to the Petitioner.

**Contentions raised by Mrs. Leonys Pereira & Mr. Craig Pereira (Director 3 & 4 of Corporate Debtor):**

9. A Miscellaneous Application was filed by the aforementioned two directors (hereinafter The Pereira's) challenged, not only the Company Petition but also the abovementioned reply filed by The Vazirani's. This Tribunal is treating the Miscellaneous Application No. 704 of 2018, as an additional reply of the Pereira's.
10. The Pereiras have in their additional reply contented that there is no debt due and payable by the Corporate Debtor to the petitioner herein. They further wish to build their case by bringing on record various documents to portray the fact that the Business Conducting Agreement entered between the petitioner and the corporate debtor was merely executed as a matter of convenience. It is argued by the applicant that the said

agreement was never meant to be acted upon, since, the alleged transactions were only between the Parreira's and the petitioner.

11. It is contended that an unregistered agreement dated 15.08.2016 was entered between the Pereira family and the Curzai family. As per the said agreement the Pereira family was to run a restaurant and the rent was to be paid in five parts, 4 of which was to go to the Curzai family and one part that comes to 20% of which amount of rent was to go to the Petitioner. Another agreement with similar terms was entered and registered between the aforesaid parties on 16.10.2006.
12. The Pereiras contend that the Vaziranis and the petitioner are hand-in-glove, and their only intention is to ensure that CIRP is initiated against the Corporate Debtor. For this purpose, he has drawn the attention of this Bench towards a Company Petition bearing No. 2355/2018, which is filed by the Pereira against the Vazirani under Section 241-242 of the Companies Act, 2013. It is also brought to the notice of this Tribunal by the Pereira that; all the Directors of the Corporate Debtors have filed several Civil suits against each other before different courts. Therefore, there has been irreconcilable breakdown of trust between the directors of the Corporate Debtor.
13. It is pointed out that the Corporate Debtor has disputed the liability vide their reply dated 01.03.2018 in response to the purported Demand Notice dated 19.02.2018. It is contended by the Pereiras that regular payments were being made by the Corporate Debtor to the Petitioner on the basis of an internal arrangement between the Pereira family and the Curzai family recorded by the MoU dated 10.10.2006. It is stated that since the Business Conducting Agreement was unstamped and unregistered, the same was not meant to be acted upon in its letter and spirit.
14. It is the case of the Pereira's that the Vazirani had forged and fabricated the board resolution dated 05.08.2017, and the same is not authorized to represent the Corporate Debtor in the present proceedings. They have also contended that the two supplemental agreements are sham, bogus and colourable documents.

**FINDINGS:**

Disregarding the contentions of the respondents, the main issue that falls for consideration in the above Company Petition is:

Whether the amounts claimed by the petitioner falls within the definition of "Operational Debt"? and whether the applicant can be termed as an Operational Creditor. In order to decide the above issue, it is important to read the definitions of "Operational Debt" and "Operational Creditor" that reads as follow:

**Section 5(20):** *"Operational Creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred".*

**Section 5(21):** *"Operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority".*

Therefore, it is very clear from the reading of above definition an Operational Debt would be related only to four categories as specified in Section 5(21) of the Code like goods, services, employment and Government dues. Admittedly, the claim of Operational Creditor relates to non-payment of Electricity Bills and Property Taxes payable by the Corporate Debtor to the Operational Creditor under business conducting agreement and does not relate to any goods or services provided by the Operational Creditor and therefore does not fall under the definition "Operational Debt" and obviously the petitioner cannot be termed as "Operational Creditor".

Had the above company petition been filed by Municipal Corporation which is a local authority claiming the taxes, the petition would be certainly maintainable before this tribunal.

The Hon'ble NCLAT vide its order dated 17.01.2020 in the matter of **Mr. M. Ravindranath Reddy Vs. Mr G. Kishan & Ors (Company Appeal No. 331 of 2019)** held that enhanced rent of lease hold property does not fall within the definition of Operational Debt in terms of Section 5(21) of the Code.

When the enhanced rent payable under a tenancy agreement by the Corporate Debtor itself does not amounts to an Operational Debt, the municipal taxes and the Electricity Bills payable by Corporate Debtor under a business conducting agreement/lease agreement stands on lesser footing and cannot be considered as Operational Debt. Therefore, we have no hesitation in holding that the above amounts claimed by the Operational Creditor does not fall within the definition of Operational Debt and the petitioner cannot be termed as “Operational Creditor”.

The Operational Creditor has claimed an amount of Rs. 14,62,205/- towards Municipal Taxes covering the following period against the total claim of Rs. 35,52,022/-:

**Property Tax Payable by Crale Foodlink Pvt. Ltd. From 2010 to 2017**

<b>Period</b>	<b>Old Rate</b>	<b>Revised</b>	<b>50% of increased taxes</b>
01.06.2010 to 30.09.2010	5178	122297	58,560
01.10.2010 to 31.03.2011	10357	245095	1,17,369
01.04.2011 to 31.03.2012	20714	415170	1,97,228
01.04.2012 to 31.03.2013	20714	361282	1,70,284
01.04.2013 to 31.03.2014	20714	361282	1,70,284
01.04.2014 to 31.03.2015	20714	361282	1,70,284
01.04.2015 to 31.03.2016	20714	483272	2,31,279
01.04.2016 to 31.03.2017	20714	483270	2,31,278
01.04.2017 to 30.09.2017	10357	241635	1,15,639
<b>Total</b>			<b>14,62,205</b>

The above company petition is filed on 12.03.2018. If we examine the above claims, all the claims prior to 12.03.2015 are barred by limitation, since we are dismissing the above Company Petition on the very nature of the claim and the locus of the applicant, we are not dealing with each and every contention raised by the respondents.

In view of the above observations, we are of the considered opinion that the above Company Petition is not maintainable before this Tribunal and is liable to be dismissed. Accordingly, the above Company Petition is dismissed without costs and pending IA's if any also stands disposed off.

However, this order does not preclude the petitioners from instituting necessary recovery proceedings against the Corporate Debtor for recovery of their dues in respect of the claims that are within limitation.

**Sd/-**  
**Shyam Babu Gautam**  
Member (Technical)

**Sd/-**  
**Venkata Subba Rao Hari**  
Member (Judicial)

**Date: 21.09.2020**