

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-V)

C.P. (IB) NO.: 860/ND/2024

IN THE MATTER OF:

Unique Tobacco Company

Registered Address at: MB-140, Gali No.:5
Master Block, Shakarpur, Delhi-110092

...Applicant/Operational Creditor

VERSUS

Pelican Tobacco (India) Private Limited

Registered Address at: 902-03, Padma Towers I,
Rajendra Place, New Delhi-110008

...Respondent/Corporate Debtor

CORAM:

SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHINCAL)

Order delivered on: 09.10.2025

PRESENT:

For the Applicant : Mr. Sumeet Verma, Sr. Adv. Mr. Rachit Ranjan, Mr.
Mahinder Pratap Singh, Ms. Charu Verma, Advs.

For the Respondent : Mr. Sanjeev Bindal, Adv.

ORDER

1. The instant Petition has been filed by the Applicant/Operational Creditor herein, namely, M/s Unique Tobacco Company in accordance with Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 6 of the Insolvency and Bankruptcy Board of India (Application to

Adjudicating Authority) Rules, 2016 against M/s Pelican Tobacco (India) Private Limited, being the Respondent/Corporate Debtor for initiating the Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP'), declaring moratorium and appointment of an Interim Resolution Professional on the ground that the Corporate Debtor has defaulted in clearing the outstanding amount of Rs. 2,36,20,939/- (Rupees Two Crore Thirty-six Lakh Twenty Thousand Nine Hundred and Thirty-nine only).

Contentions of the Operational Creditor:

2. The facts and submissions as averred by the Applicant/Operational Creditor in the instant application for seeking the initiation of CIRP are mentioned hereinbelow—

2.1. The Corporate Debtor approached the Applicant in the year 2021 for the purpose of executing a Manufacturing Agreement between the parties with following objective clauses—

“Pelican shall, during the Term of this Agreement, manufacture the Products under the respective brand names of the principal and supply the same on an basis to UTC in accordance with the terms and conditions as specified under this Agreement.

Pelican shall manufacture and deliver the Products to UTC in consideration for the price of the Products in accordance with the Order(s) from UTC.

Pelican shall not directly acknowledge and agree that all transactions, arrangements and other agreements between the Parties pursuant to this Agreement shall be made, in accordance with the Applicable laws.”

2.2. The aforementioned Manufacturing Agreement was agreed upon and executed on 10.07.2021 between the parties. In effect, the said Agreement was executed for the manufacture as well as delivery of the product (cigarettes of a certain brand name with which the Corporate Debtor has a separate agreement with). The Agreement expressly stated the payment schedule, duration of the agreement along with mode of communication in the event of dispute.

2.3. The clause 7.4 of the said Agreement provides that the Operational Creditor shall provide with a 'security amount' of Rs.31,00,000/- (Rupees Thirty Lakh only) against the execution of delivery of the products. For better clarity, the said clause has been reproduced hereinbelow—

*“UTC shall provide Pelican with a **fixed security amount** of Rs.31,00,000/- (Rupees Thirty Lakh only) through Cheque No.:153551 dated 10.07.2021 drawn on South Bank, Nirman Vihar Branch, Delhi as agreed by and between the parties for the purpose of execution of such delivery. The **security amount shall be refunded to the UTC within 15 days of termination** of the agreement. **After that 18% interest will be charged per month till the amount is paid.**”*

2.4. In addition to the aforementioned advance amount paid for the purpose of execution of delivery, the Operational Creditor also made advance payments for the orders made by the Applicant as per the clause 7.5 of the said Agreement. It has been further submitted that the Applicant made advance payments from time to time and as such, there is total amount of Rs.26,64,939/- (Rupees Twenty-six Lakh Sixty-four Thousand Nine Hundred and Thirty-nine only) outstanding due to be payable by the Corporate Debtor against the invoices raised by the answering Respondent.

2.5. In addition to the aforementioned advance payments constituting the alleged operational debt, the Applicant also draws the attention towards the clause 14 of the said Agreement which deals with its termination, especially in the context of the aforementioned security amount. The operative part of the clause has been reiterated hereunder—

*“This Agreement shall become effective from the Effective Date and, unless earlier terminated as provided herein, shall **continue in full force and effect till six months from the date of commencement subject to further renewal from time to time by entering into a supplementary agreement.** Extension of the agreement will be after discussion and mutual consent of the Parties...”*

2.6. As stated above, the termination was automatic as there was no subsequent supplementary agreement signed between the parties involved, hence, the advance security amount of Rs.31,00,000/- was also due to be repaid by the Respondent by 25.01.2022, i.e., 15 days after six months from 10.07.2021, being the date of commencement of the agreement. Thereafter, interest was to be charged by on the said amount at the rate of 18% per month.

2.7. The Operational Creditor has sent various e-mails followed by phone calls requesting release of the outstanding dues; however, to no avail.

2.8. As a result, the Applicant issued the Demand Notice dated 15.10.2024 to the Respondent in accordance with Section 8 of the Code read with the allied rules for the outstanding dues. Hence, the total outstanding amount is Rs.2,36,20,939/- (Rupees Two Crore Thirty-six Lakh Twenty Thousand Nine Hundred and Thirty-nine only) which is inclusive of Rs.57,64,939/- (Rupees Fifty-seven Lakh Sixty-four Thousand Nine Hundred and Thirty-nine only) as

the principal amount and Rs.1,78,56,000/- (One Crore Seventy-eight Lakh and Fifty-six Thousand only) as the interest charged on the security amount of Rs.31,00,000/- as on 14.10.2024.

- 2.9. The Corporate Debtor has replied to the aforementioned Demand Notice raising certain objections. However, the Applicant submits that the objections made therein are specious in the nature without any basis or iota of evidence.
- 2.10. The Operational Creditor has filed the instant petition before this Adjudicating Authority for seeking initiation of CIRP against the Corporate Debtor on the ground of the unpaid outstanding dues of Rs.2,36,20,939/- (Rupees Two Crore Thirty-six Lakh Twenty Thousand Nine Hundred and Thirty-nine only), inclusive of interest as on 14.10.2024.

Contentions of the Corporate Debtor:

3. The facts and submissions as averred by the answering Respondent/Corporate Debtor in their reply submitted on 15.03.2025 are mentioned hereinbelow—
- 3.1. The instant application is false and *mala fide* and a gross abuse of the process of law. There is no cause for the Applicant to file the instant application under Section 9 of the Code.
- 3.2. The instant petition is nothing but a recovery proceeding to receive their alleged outstanding amount under the garb of CIRP under the Code. It is not the object of the Code that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an Operational Creditor.
- 3.3. There was no communication from the Applicant for any of the stated outstanding amount.
- 3.4. The alleged debt does not fall under the definition of 'operational debt' in accordance with Section 5(21) of the Code. The part of the alleged debt, i.e.,

security amount of Rs.31,00,000/- (Rupees Thirty-one Lakh only) does not constitute as 'operational debt' as the Applicant has neither provided goods nor any services to the Respondent against the said amount, therefore, the said amount can't be said to be operational debt in nature. As a result, any interest arising out of the said security amount also does not form part of the operational debt.

Therefore, out of the total alleged debt amount, Rs.2,09,56,000/- (Rupees Two Crore Nine Lakh Fifty-six Thousand only) does not constitute 'operational debt' and thus, become irrelevant for the purpose of the instant petition.

3.5. The interest charged per month aggregating upto 216% per annum on the security amount is never heard of and the same is not tenable in the eyes of law as it is against the regulations and policies issued by RBI from time to time.

3.6. As a result, only Rs.26,64,939/- (Rupees Twenty-six Lakh Sixty-four Thousand Nine Hundred and Thirty-nine only) remains which is significantly lesser than the threshold amount as prescribed under the Section 4 of the Code.

3.7. The Corporate Debtor is a solvent company, has not defaulted in its payment obligations and has not been declared as NPA or willful defaulter by any bank, financial institution or NBFC.

3.8. The Manufacturing Agreement never got terminated as the Applicant requested for several modifications and new purchases were made; however, for reasons best known to the Applicant, they stopped purchasing the products from answering Respondent after January, 2023.

3.9. On verbal instruction of the Operational Creditor, vide Invoice No.7 dated 20.08.2023, the Corporate Debtor supplied 'Automatic Carton Overwrapping Machine' to one of the Applicant's sister concern namely, M/s. Signtech

Construction Pvt. Ltd. And raised an invoice of Rs.29,91,890/- (Rupees Twenty-nine Lakh Ninety-one Thousand Eight Hundred and Ninety only) against which an amount of Rs.4,76,000/- (Rupees Four Lakh Seventy-six Thousand only) was paid by the sister concern of the Applicant. Thereafter, the Applicant verbally asked the Corporate Debtor to adjust the balance amount of Rs.25,15,890/- (Rupees Twenty-five Lakh Fifteen Thousand Eight Hundred and Ninety only) from the outstanding amount remaining with the Corporate Debtor.

3.10.As a result of the objections raised herein, the answering Respondent humbly submits to dismiss the instant application.

4. Thereafter, the Applicant has filed their rejoinder dated 30.04.2025 which has been briefly summarised hereunder—

4.1. The objection concerning the debt not meeting the threshold is completely false and misleading. The Corporate Debtor is trying to circumvent the interest charged upon the advance security amount by stating disagreement about the same. The Manufacturing Agreement dated 10.07.2021 had been signed by both the parties making the clause in question agreed upon and in accordance with law. Further, there is no regulation or rule barring such an interest charged.

4.2. The National Company Law Appellate Tribunal has passed catena of judgments wherein it has been upheld that operational debt includes amount paid in advance which inadvertently also constitutes the advance security amount and its interest.

4.3. There is an eminent judgment in the matter of **Sanam Fashion and Design Exchange Limited v Ktex Non Wovens Private Limited, C.A.(AT) (Ins.) No.:1234 of 2023** which delineates the aforementioned point. The relevant extract is mentioned hereinbelow—

“31. In the present case, the appellant had placed an advance with the respondent for supply of goods, it does not matter who is the supplier or the receiver of goods and services as laid down in the M/s Consolidated Construction Consortium Ltd. (supra). The present case is squarely covered by the above discussed Judgment, as there is a clear nexus between payment made and supply of goods and services. Accordingly, we decide that the appellant is to be treated as Operational Creditor in the instant case.”

4.4. The Applicant has always made payments as per the Agreement. However, after its termination, the Corporate Debtor did not pay back the amount of Rs.31,00,000/- provided for the purpose of execution of the deliveries along with advance provided, despite continuous emails, messages and phone calls from the Applicant herein requesting for the payment of the dues.

4.5. The Corporate Debtor failed to provide any iota of evidence of the debt being paid. The Corporate Debtor is defaulted in paying the debt as per the calculation sheet provided. This is nothing but an attempt to deny the debt and default without any evidence without any justification.

4.6. It has been clearly stated in clause 14 of the said Agreement that the Agreement was supposed to be automatically terminated with effect from 6 months from the date of commencement save for written and agreed upon supplementary agreement. And there is no supplementary agreement made or signed between the parties. The invoices raised post the termination of the said Agreement are to be considered independently, and not part of the agreement.

4.7. The said invoices do not pertain to the brand of the Operational Creditor, but the brand of the Corporate Debtor “Fun Gold” clearly evincing the fact that these invoices were raised just to adjust the amount and not continuation of the said

Agreement. It is submitted that after that the corporate debtor also asked for the rest of the payment vide email dated 07.12.2023.

4.8. The alleged averment concerning another entity being the Applicant's sister company is false. M/s. Signtech Construction Private Limited is not associated with the Applicant, and therefore, any transaction between the said entity and the answering Respondent is of no concern to the Applicant herein, ensuring that the Applicant would not be paying for the outstanding dues of the said entity. Any invoice raised or amount due would have to be repaid by this third party as there is no concrete connection furnished by the answering Respondent.

ANALYSIS & FINDINGS

5. We have heard the submissions made by Ld. Counsel on behalf of the Applicant as well as Respondent and perused the Pleadings and Written Submissions that have been filed by the parties involved.
6. The Applicant herein has prayed for the initiation of the Corporate Insolvency Resolution Process in accordance with Section 9 of the Code, stating that the outstanding amount due to be payable to the Applicant herein by the Corporate Debtor falls under the definition of 'operational debt' as per Section 5(21) of the Code.
7. The Operational Creditor in Part IV of the Petition has described the debt amount in following heads-

TOTAL AMOUNT OF DEBT:- Total amount of debt: Rs. 2,36,20,939/-

Break up of the debt:

(A) Total amount of default from invoices (advance): Rs. 26,64,939/-

(B) Total amount of default from Advance from cheque: Rs. 31,00,000/

(C) Total interest as per the Agreement (clause 7.4): Rs. 1,78,56,000/-

Total amount of debt: A+B+C= Rs. 2,36,20,939/-

8. On perusal of the Petition and reply filed by the Corporate Debtor, transaction involving aforementioned debt is based upon a manufacturing Agreement dated 10.07.2021, entered between the Operational Creditor and the Corporate Debtor, a copy of which is placed on record as Annexure A-IV.

9. As mentioned in para (G) of the Part IV of the Petition, claim of Rs. 31,00,000 is based upon amount paid by the Operational Creditor in terms of Clause 7.4 of the manufacturing agreement dated 10.07.2021. It is also the case of the Applicant that this amount of Rs 31,00,000/- was given as advance payment for goods. The Corporate Debtor on the other hand has stated that as mentioned in Clause 7.4 of the Agreement, this amount of Rs 31,00,000 was given as security and therefore does not fall within the definition of “Operational Debt” as defined in Section 5(21) of the Code. Section 5(21) of the Code, read as under:—

“Section 5. Definitions—

... (21). “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment 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; ...”

10. In this regard, a reference is made to the decision of the Hon’ble Supreme Court in the case of **Global Credit Capital & Anr. v Sach Marketing Private Limited & Anr., (2024) 9 SCC 482**, wherein it has been held that—

“20. Where one party owes a debt to another and when the creditor is claiming under a written agreement/arrangement providing for rendering “service”, the debt is an operational debt only if the claim subject-matter of the debt has some connection or co-relation with the “service” subject-matter of the transaction. The written document cannot be taken for its face value. Therefore, it is necessary to determine the real nature of the transaction on a plain reading of the agreements.”

11. As described above, the nature of the debt constituting the basis for initiation of CIRP under Section 9 of the Code has to be mandatorily operational in nature, meaning that such a debt must be directly connected to the provision of the goods and services. The debt is an operational debt only if the claim/subject matter of the debt has some connection or co-relation with the ‘service’ subject matter of the transaction. It is necessary to determine the real nature of the transaction on a plain reading of the agreement which forms the basis for the commercial relationship between the parties involved.
12. The aforementioned well-established legal principle has crystallised the critical jurisprudential doctrine that for a debt arising out of a written agreement providing for rendering of services to be classified as operational debt, there must exist some demonstrable connection between the subject matter of debt and the service aspect of the transaction. However, it is clear from the record that this security amount functions as collateral security, held exclusively to ensure performance and execution of delivery obligations in the eventuality of payment default by the Applicant, rather than serving as consideration for goods or services rendered.

13. We have to examine whether Rs 31,0000/- disbursed by the Operation Creditor to the Corporate Debtor in terms of Clause 7.4 of the Manufacturing Agreement dated 10.07.2021 (page 40-54) fall within the definition of ‘operational debt’.

Relevant Clauses of the Manufacturing Agreement

13. (i) In the Recital it is mentioned:

WHEREAS:

A. UTC is authorized marketer, distributor and promoter of tobacco products and related articles in India given by GOLDEN TOBACCO COMPANY LIMITED (hereinafter referred to as the Principal), a registered cigarette manufacturer under the Laws of India having legitimate license to manufacture cigarette. The Principal engaged on a global basis in the business of inter alia, the National Distribution and sale of a wide range of Cigarette, Tobacco and Electronic Cigarettes ("the Products").

B. UTC is engaged in the business of, inter alia, distributing and marketing such Products and has gained valuable experience in this field.

(ii) **Clause 2** is about Purpose and Scope. Relevant part of Clause 2 read as under:

2. PURPOSE AND SCOPE:

2.1 Pelican shall, during the Term of this Agreement, manufacture the Products under the respective brand names of the principal and supply the same on an basis to UTC in accordance with the terms and conditions as specified under this Agreement.

2.2 Pelican shall manufacture and deliver the Products to UTC in consideration for the price of the Products in accordance with the Order(s) from UTC.

Thus, the Corporate Debtor is a manufacturer of Tobacco product and the Operation Creditor is the distributor.

Clause 3. PRODUCTION SCHEDULE AND MANUFACTURE OF PRODUCTS

Clause 3.3

3.3 Pelican shall manufacture the Products as per the Order(s) subject to the terms of this Agreement and shall, with the support of UTC, use its best efforts during the Term of this Agreement to manufacture the Products economically by

improvement in productivity and by reducing its manufacturing, supply and other costs for the Products by implementing cost savings initiatives.

Clause 4. DELIVERY

4.1 Pelican will fill promptly and to the best of its ability all orders for the products received from UTC.

Clause 5. SUPPLY OF THE PRODUCTS

5.1 The supply of the Products by Pelican to UTC shall be subject to this Agreement and the Order(s). After the purchase Order the product shall be delivered within 7 days. After such period it will be considered as, delayed delivery.

Clause 7. CAPITAL ASSETS

7.1 Pelican shall be responsible for all raw materials, labor and machinery necessary to discharge its obligations under the terms of this Agreement.

7.2 Pelican shall maintain an inventory of raw materials used in the manufacture of the Products reasonably sufficient' to meet UTC's forecast of anticipated monthly Purchase Orders as agreed between the parties.

7.3 UTC shall bear the cost in case of increase in price of the raw materials in any contractual year. Pelican shall communicate in regards to the same well in advance. This will be subject to provisions in para 9.2 of this agreement.

7.4 UTC shall provide Pelican with a fixed security amount of Rs. 31,00,000. (Rupees Thirty One Lakhs Only) through Cheque No. 153551 dated 10.07.2021 drawn on South Bank Nirman Vihar Branch Delhi as agreed and between the parties for the purpose of execution of such delivery. The security amount shall be refunded to the UTC within 15 days of termination of the agreement. After that 18% interest will be charged per month till amount is returned.

11. OBLIGATION OF THE PARTIES

i-Duties of the Owner~ The Owner shall be liable to do the followings:

- (i) The owner shall be responsible to give adequate training to the persons of the Manufacturer before the start of the actual production.*

- (ii) *The owner shall be responsible to inspect the tools at the site of the manufacture before the start of the production.*
- (iii) *If the supplier of raw material is finalized by the manufacturer independently, it is the duty of the owner to approve the quality of the raw material before the start of the production.*
- (iv) *The manufacturer shall not be responsible for any manufacturing defect arises due to any defect in the quality in the raw material after approval from the owner. If the raw material other than approved by the UTC is used by the manufacturer than agreement will be liable to be terminated.*
- (v) *The owner shall be responsible to send the delivery schedule seven (7) days in advance to the manufacturer.*
- (vi) *If there is a drop in the volume of the sale, the owner shall intimate the same to the manufacturer well in advance and send the revised delivery schedule.*

ii Duties of the Manufacturer- *The Manufacturer shall manufacture the products as per the schedule given by the owner subject to the following terms and conditions-*

- (i) *The Manufacturer shall inspect the raw material received by it from the owner or any third party duly nominated by the owner.*
- (ii) *The inspection report should be submitted to the owner if there is any defect in the supply of raw material within 48 hours of the receipt of the raw, material.*
- (iii) *The manufacturer shall allow the Owner or any designated agency to be appointed by the owner to inspect the tools at the Manufacturer site before the start of the production (SOP)*
- (iv) *The manufacturer shall procure the raw material as per the schedule given by the owner for the production of its products.*
- (v) *Keep at all time sufficient number of products in stock in safe conditions and take an appropriate insurance cover of the finished goods as well as raw /material.*
- (vi) *The manufacturer shall do the quality check of the products produced; by it*
- (vii) *The Manufacturer shall supply the products, which qualify the quality check conducted by the manufacturer.*

- (viii) The manufacturer shall produce the products as per the specifications approved by the Owner.*
- (ix) The Manufacturer shall keep a proper record of the inventory at all time.*
- (x) The Manufacture shall allow the representatives of the owner to check whether the manufacturer is following the process agreed between the parties.”*

14. On perusal of the above Manufacturing Agreement, it emerges that the Corporate Debtor is the Manufacturer and the Operational Creditor is the Distributor. Upon the Order given by the Operational Creditor, it is the obligation of the Corporate Debtor to manufacture the product as per specification of the Order and supply to the Operational Creditor. As per Clause 7.4 of the Agreement, the Operational Creditor has given a cheque of Rs 31,00,000/- to the Corporate Debtor, as fixed security amount which is liable to be refunded within 15 days of the termination of the agreement. Details of the Cheque is also given in Clause 7.4 of the Agreement.

15. As mentioned clearly in Clause 7.4, this amount of Rs 31,00,000 is fixed security amount to be refunded on termination of the agreement. The case of the Applicant that this amount is an advance amount paid for items to be delivered. However, the language of Clause 7.4, do not support the contentions of the Applicant. No doubt, any advance amount paid for supply of goods or services is treated as 'operational debt'. But in the present case in hand, if we read Clause 7.4, we find that nowhere this amount of Rs 31 lakhs is shown as advance payment for supply of goods/services. Clause 11 of the Agreement specifies the obligations of the parties including obligations of the Operational Creditor. This fixed security amount of Rs 31 lakhs appears for securing the obligations of the Operational Creditor. This default of refund of 31 lakhs has no direct or indirect

connection with supply of goods or any services in terms of written Manufacturing Agreement dated 10.07.2021. Consequently, claim of any interest on these 31 lakhs also cannot be treated as Operational Debt.

16. Remaining amount of default mentioned in Part IV of the Petition is default for unpaid invoices (advance) i.e. Rs. 26,64,939/-. This amount is below threshold amount of One Crore provided in Section 4 of the IBC. Therefore, the Present Petition is not maintainable.

17. With these observations, it is hereby ordered that the application bearing CP (IB) No. **860 of 2024** filed by, **Unique Tobacco Company**, (Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Pelican Tobacco (India) Private Limited** (Corporate Debtor), is not maintainable and therefore stands **dismissed without costs**.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)