

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT-IV

CP (IB)-321(ND)/2025

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

IN THE MATTER OF:

M/S DIWAN SPIRITS

...Applicant/Operational Creditor

VERSUS

KHAO GALI RESTAURANTS PRIVATE LIMITED

...Respondent/Corporate Debtor

Order Pronounced On: 18.12.2025

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI,

HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Shivam Goel, Ms. Ramya S. Goel, Ms. Sanya Sharma, Ms. Parul Garg, Advocates.

For the Respondent : Mr Aditya Ganju, Mr. Samanyu Sethi, Mr. Vatsal Agarwal, Advocates.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

- 1.** This Application has been filed by M/s Diwan Spirits, the Applicant/Operational Creditor (“OC”) before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against Khao Gali Restaurants Private Limited on the ground that it has defaulted in paying the outstanding amount of Rs.1,44,28,908.99 (Rupees One Crore Forty Four Lakhs Twenty Eight Thousand Nine Hundred Eight and Ninety Nine Paise) inclusive of interest calculated till 28.11.2022 (with further interest).
- 2.** The Corporate Debtor herein, Khao Gali Restaurants Private Limited bearing CIN: U74899DL1994PTC060759 was incorporated under the provisions of the Companies Act 1956 and is having its registered office at B-115, 2nd Floor, DDA Shed, Okhla Phase-1, New Delhi-110020. Since the registered office of the Corporate Debtor is situated in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority under sub-section (1) of section 60 of the Code in relation to the prayer for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
- 3. SUBMISSIONS OF THE APPLICANT/OPERATIONAL CREDITOR:**
 - i.** The Operational Creditor is a Partnership Firm and was in the business of wholesale trade of liquor and held an Ll licence for wholesale supply of liquor under the Delhi Excise Policy which came into effect from 01.09.2021.
 - ii.** The Corporate Debtor is a company incorporated under the Companies Act, 1956 and existing under the Companies Act, 2013 and held a retail licence under the Delhi Excise Policy which came into effect from 01.09.2021. It used to run its retail store(s) under the tradename M/s Alcomart.
 - iii.** In the month of November, 2021, the Corporate Debtor had approached the Operational Creditor intimating its intention of sourcing various types of liquor from the Operational Creditor. As such, the Operational Creditor supplied

various types of liquor to the Corporate Debtor. However, the Corporate Debtor failed to maintain financial discipline inasmuch as it failed to make payments against individual invoices and only made ad hoc payments. The invoices clearly recorded that "Interest @ 18% p.a. applicable on payments made after due date" being the agreed terms between the Parties (which were accepted without any protest and demur). As such, the Corporate Debtor is also liable to pay interest.

- iv.** The Corporate Debtor placed multiple order(s) to the Operational Creditor against which the invoice(s) of Rs.1,38,68,675.42 (Rupees One Crore Thirty Eight Lakhs Sixty Eight Thousand Six Hundred Seventy Five and Forty Two Paise) wereraised between 26.06.2022 to 29.07.2022. Against the same, the Corporate Debtor only made payment of Rs.6,250.30 (Rupees Six Thousand Two Hundred Fifty and Thirty Paise).
- v.** Pursuant to the request of the Operational Creditor, the Corporate Debtor issued a balance confirmation letter on 22.08.2022 thereby admitting dues to the tune of Rs.1,40,55,325/- (Rupees One Crore Forty Lakhs Fifty Five Thousand Three Hundred and Twenty Five Only) as on 31.07.2022.
- vi.** As such, the Corporate Debtor was in default of a sum of Rs. 1,38,62,425.12/- (Rupees One Crore Thirty Eight Lakhs Sixty Two Thousand Four Hundred Twenty Five and Twelve Paise Only).
- vii.** Owing to the said default, the Operational Creditor got issued a Notice in Form 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 28.11.2022 whereby highlighting the default/ non-payment by the Corporate Debtor and calling upon it to inform of a pending "dispute" or make payment against the default.
- viii.** The said notice was served upon the Corporate Debtor at its Registered office by Registered Post on 29.11.2022; at its works office by Registered Post on 01.12.2022; and by email [khaogali2@gmail.com] mentioned in the Master Data on 28.11.2022.
- ix.** On 07.12.2022, a Reply was received wherein the Corporate Debtor admitted default to the tune of a principal amount of Rs.81,38,560/- (Rupees Eighty One Lakhs Thirty Eight Thousand Five Hundred and Sixty). However, in an ill-fated bid to bring the amount below the threshold of Section 4 of the Code, the Corporate Debtor tried to raise a spurious, hypothetical and illusory dispute

pertaining to the remaining amount against market schemes and breakages. At the same time, it sought reconciliation of accounts.

- x.** On 10.03.2023, the Operational Creditor through its counsel got issued a letter highlighting the falsity of the stand of the Corporate Debtor and without prejudice, appointing an officer to conduct the reconciliation of accounts.
- xi.** On 21.03.2023, an email was received by the Corporate Debtor requesting for 15 days to depute a responsible officer. Thereafter, despite expiry of 15 days period, no intimation whatsoever was received; let alone the details of any officer of the Corporate Debtor. As such, on 14.04.2023, the Operational Creditor through its counsel granted one final opportunity of 5 days. In response on 17.04.2023, the Corporate Debtor informed that it did not have any earlier employee and sought time till May, 2023. Ultimately, on 23.05.2023, the Corporate Debtor informed that its official would be getting in touch within a couple of days. However, till date, no one from the Corporate Debtor has contacted the Operational Creditor.
- xii.** The Operational Creditor had indulged the Corporate Debtor into conducting reconciliation without prejudice to its rights and despite multiple opportunities and passing of substantial time, the Corporate Debtor never conducted the same. This itself shows that the averments made in the reply dated 07.12.2022 were spurious, hypothetical and illusory.
- xiii.** The fact that the alleged "dispute" tried to be raked up as an afterthought is patently spurious, hypothetical, illusory and misconceived is clear from the following facts:
 - a. Till date, the Corporate Debtor has miserably failed to identify even a single incident of incorrect/ inaccuracy in the invoices and raise specific dispute with the Operational debtor;
 - b. Till the sending of notice, the Corporate Debtor has not sent any communication whatsoever raising an issue as to the quality of the goods supplied or ever sought to return the same;
 - c. The Corporate Debtor had itself confirmed dues to the tune of Rs.1,40,55,325/- (Rupees One Crore Forty Lakhs Fifty Five Thousand Three Hundred and Twenty Five Only) by issuing a balance

confirmation as on 31.07.2022, i.e. just after the raising of the invoice(s) against which default has been committed; and

d. Without prejudice, even assuming the default is only Rs.81,38,560/- (Rupees Eighty One Lakhs Thirty Eight Thousand Five Hundred and Sixty Only), even then the default amount would be higher than the threshold accounting for accrued interest.

- xiv.** As on date, the Corporate Debtor is still liable to pay the Operational Creditor a principal amount of Rs.1,38,62,425.12 (Rupees One Crores Thirty Eight Lakhs Sixty Two Thousand Four Hundred Twenty Five and Twelve Paise Only) along with interest at the rate of 18% per annum as mentioned in the invoices themselves (and accepted by the Corporate Debtor without any protest whatsoever). The interest (calculated till 28.11.2022) is Rs.5,66,483.87 (Rupees Five Lakhs Sixty Six Thousand Four Hundred Eighty Three and Eighty Seven Paise). As such, till 28.11.2022 (i.e. the date of sending Form-4), the Corporate Debtor was in default to the tune of Rs.1,44,28,908.99 (Rupees One Crore Forty Four Lakhs Twenty Eight Thousand Nine Hundred Eight and Ninety Nine Paise).
- xv.** The Operational Creditor has sought 5A from its Banker. However, the bank refused to provide the certificate.
- xvi.** It was also submitted that the present petition was filed on 24.05.2025 and as such within 3 years of raising of invoices and the date of default in terms of Article 137 of the Limitation Act. Additionally, the CD had acknowledged its debt by issuing a balance confirmation letter on 22.08.2022. The transactions went under the scanner of the Enforcement Directorate in relation to its investigation(s) related to the Delhi Excise Policy 2021-22. The clean chit was given to the OC only in 2024 when its seized articles were released – Order of the Appellate Tribunal, PMLA dated 07.08.2024 in respect of Ms.Alka Diwan (Partner of OC) is appended. In any case, the petition has been filed within the period of limitation.
- xvii.** It was submitted that there is no pre-existing dispute, i.e. prior to the receipt of the Notice in Form 4 dated 28.11.2022, as held in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353*** . There is no letter, email etc. raising any dispute regarding the alleged market schemes, expiries and breakages of stock or making a request for reconciliation. On the contrary, the

CD had issued balance confirmation letter making any alleged dispute spurious, hypothetical and illusory.

xviii. By the Letter dated 22.08.2022, the CD has admitted its debt and default to the tune of Rs.1,40,55,325/- on 31.07.2022. The CD has given its bank statements with its reply to the demand notice showing payments to the OC and the last payment is reflected on 19.07.2022 of Rs.50,00,000/-. Admittedly, there is no payment after 31.07.2022 (when the debt stands acknowledged).

xix. As regards the alleged claim(s) towards market schemes, expiries and breakages of stock, it is submitted that:

- (a) The same were never accepted by the OC.
- (b) There are no debit/credit notes in support of such market schemes, expiries and breakages of stock; let alone the same having been received or accepted by the OC.
- (c) There is no letter, document, email etc. prior to the sending of the Demand Notice in Form 4 dated 28.11.2022 in reference to such market schemes, expiries or breakages of stock.
- (d) The alleged breakage of stock is being raised as an afterthought as such alleged breakage would have been identified at the time of delivery; however, the same has been raised after 5 months of the last delivery and after receipt of the Demand Notice in Form 4 on 28.11.2022.
- (e) The alleged expiry of products cannot concern the OC. The goods having been delivered are the concern of the CD as the title thereto stands transferred.
- (f) No written document has been filed evidencing any such market scheme.
- (g) All the invoices record the agreed terms and conditions as under:

“1. Payment to be made on or before 60 days from date of invoice/receipt of goods (due date).

2. No return and No exchange after delivery.

3. Any damages, shortages, etc. should be reported at the time of delivery. No claims will be accepted after delivery.”

No breakage or any other issue was raised at the time of delivery or within the stipulated period of 60 days. It was raised after more than 5 months and after the receipt of the Demand Notice in Form 4 dated 28.11.2022.

xx. The dues of the CD stand crystalized when it issued the Letter dated 22.08.2022 admitting its debt and default to the tune of Rs.1,40,55,325/- on 31.07.2022. Neither have any payments been shown thereafter nor any debit/credit notes. As such, the request for reconciliation was not genuine. Additionally, the request for reconciliation was only made after the receipt of the Demand Notice in Form 4 dated 28.11.2022 and hence, cannot qualify as a pre-existing dispute. Reliance in this regard was made on Sharad Chandra Goel v. Tarannom Shargh International Transportation Co., 2023 SCC OnLine NCLAT 232, which has been upheld by the Hon'ble Supreme court as well.

4. ANALYSIS AND FINDINGS:

- i.** We have heard the learned counsel for the Applicant/Operational Creditor and have carefully perused the pleadings, documents placed on record.
- ii.** It is trite law that the scope of enquiry under Section 9 of the Code is limited. The Adjudicating Authority is required to ascertain: (a) whether there exists an operational debt; (b) whether there has been a default in payment of such debt; and (c) whether there exists a pre-existing dispute between the parties prior to the issuance of the demand notice under Section 8 of the Code. The Code is not intended to be a substitute for a recovery forum and cannot be invoked where the debt itself is seriously disputed.
- iii.** In the present case, it is not in dispute that the parties had commercial dealings relating to the supply of liquor during the subsistence of the Delhi Excise Policy 2021-22. However, the Corporate Debtor, in its reply dated 07.12.2022 to the Demand Notice issued in Form-4, has specifically disputed the quantum of the alleged operational debt. The Corporate Debtor in the reply has asserted that substantial amounts claimed by the Applicant are subject to adjustment on account of market schemes, expiries and breakages of stock, and has admitted liability only to a limited extent which would be less than the threshold required to file a Section 9 Application.
- iv.** From the material placed on record, it is evident that the issue between the parties is not merely one of non-payment but involves reconciliation of accounts and determination of mutual claims and adjustments. The correspondence exchanged between the parties after issuance of the demand notice shows that reconciliation of accounts was contemplated and discussed. The very fact that

the Applicant itself agreed, albeit without prejudice, to undertake reconciliation indicates that the liability was not crystallised and undisputed as on the date of issuance of the demand notice. This Adjudicatory Authority also takes note of the fact that the Corporate Debtor even in these mails has disputed the amount of debt because of adjustments.

- v.** This Adjudicating Authority is conscious of the settled principle laid down by the Hon'ble Supreme Court in *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.*, (2018) 1 SCC 353, that at the stage of admission of a Section 9 application, the Adjudicating Authority is only required to see whether there exists a plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion unsupported by evidence. In the present case, the defence raised by the Corporate Debtor regarding reconciliation, market schemes and stock-related adjustments cannot be brushed aside as illusory or moonshine at this stage.
- vi.** The reliance placed by the Applicant on the balance confirmation letter dated 22.08.2022 also does not conclusively establish an undisputed operational debt for the purposes of Section 9 of the Code. The said document, at best, reflects the position of accounts as on a particular date and does not foreclose the Corporate Debtor from raising bona fide disputes regarding subsequent adjustments, schemes, or claims arising out of the same commercial relationship.
- vii.** Once a genuine dispute regarding the debt or its quantum is shown to exist prior to or in response to the demand notice, the Adjudicating Authority is barred from admitting the application under Section 9 of the Code, irrespective of the amount claimed.
- viii.** This Adjudicating Authority is also mindful of the fact that the transactions in question arose in the peculiar backdrop of the Delhi Excise Policy 2021-22, which itself became subject matter of investigation by various authorities. In such circumstances, issues relating to reconciliation of accounts, schemes, expiries and breakages assume significance and reinforce the conclusion that the dispute between the parties is not amenable to resolution in insolvency proceedings.

- ix.** In view of the foregoing discussion, this Adjudicating Authority is of the considered opinion that the present Application is hit by the existence of a pre-existing dispute and involves adjudication of disputed questions of fact requiring detailed evidence. The Applicant has failed to establish a clear, undisputed operational debt and default, which is a sine qua non for admission of a petition under Section 9 of the Code.
- x.** Consequently, the present Petition bearing **CP (IB)-321(ND)/2025** is **dismissed**. However, the Applicant is at liberty to avail such other remedies as may be available to it in law before the appropriate forum.
- No order as to costs.

-SD/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD/-
(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)