

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL
COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 16.10.2026 AT
10.30 A.M. THROUGH VIDEO CONFERENCING:**

**CORAM: SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)**

APPLICATION NUMBER : --

PETITION NUMBER : CP/(IB)/170/CHE/2024

NAME OF THE PETITIONER : Carlsberg India Pvt Ltd

NAME OF THE RESPONDENT(S) : Accord Distillers & Brewers Pvt Ltd

UNDER SECTION : Sec 9 Rule 6 of IBC, 2016

ORDER

Present: Ld. Counsel Mr. Pawan Jhabakh for the Respondent.

Vide separate order pronounced in open court, **CP/(IB)/170/CHE/2024**
is Dismissed.

Sd/-
RAVICHANDRAN RAMASAMY
Member (Technical)

Sd/-
JYOTI KUMAR TRIPATHI
Member (Judicial)

jp

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP (IBC) / 170 (CHE) / 2024

*(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

Carlsberg India Private Limited,
3rd Floor, Ireo Grand View Tower
Sector 58, Gurgaon - 122001.

... Operational Creditor/Petitioner

-Vs-

Accord Distillers and Brewers Private Limited
(formerly known as A. M. Breweries Pvt. Ltd.)
No 29, Thilak Street, T. Nagar,
Chennai, Tamil Nadu - 600017.

...Corporate Debtor/Respondent

Order Pronounced on 16.10.2026

CORAM

**SHRI JYOTI KUMAR TRIPATI, MEMBER (JUDICIAL)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

*For Petitioners :- Ld counsels. CT Murugappan, Shaheedha Fathima
and B. Prashanth Nadaraj,*

For Respondent :- Ld counsels. Pawan Jabakh, K.M.Ashif

ORDER

(Heard Through Hybrid Mode)

1. This Petition has been filed under Section 9 of the Insolvency and Bankruptcy code, 2016 (“IBC”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Carlsberg India Private Limited**, (hereinafter referred to as ‘Operational Creditor’)

seeking to initiate Corporate Insolvency Resolution Process against **Accord Distillers and Brewers Private Limited** (hereinafter referred to as '*Corporate Debtor*').

2. Part-I of the Petition sets out of the details of the Operational Creditor.

It is averred that, Operational creditor represented by through its Authorized Representative Ruchi Johnson, Senior Manager- Legal with its office situated at 3rd Floor, Ireo Grand View Tower Sector 58, Gurgaon - 122 001.

3. Part-II of the Petition sets out the details of the Corporate Debtor Accord Distillers and Brewers Private Limited, with Identification No. U15531TN2010PTC078243, incorporated on 26.11.2010, with an Authorized Share Capital of Rs. 180,00,00,000/- (Rupees One-Hundred and Eighty crores only) and the Paid-up Share Capital of Rs. 179,53,08,120/- having its registered office at No 29, Thilak Street, T. Nagar, Chennai, Tamil Nadu - 600 017.

4. In Part-III of the Petition the Operational Creditor has not proposed any Insolvency Professional to act as a Resolution Professional and therefore, prayed the Tribunal to make a reference to the board for appointment of Interim Resolution professional.

5. Part-IV of the Petition states that the total outstanding Debt is Rs. 11,27,54,055/- (Eleven Crores Twenty-seven Lakhs Fifty four Thousand Fifty five rupees only) as the principal amount along with an interest as on

11.06.2024. It is stated that the Corporate Debtor has been in default of the unpaid operational debt from 30.09.2022 and the default continues till date.

6. Part-V of the Petition describes the Particulars of the Operational Debt, documents, records and evidence of the default as below:

- Provision of Law, Contract or Other Document under Which Operational Debt Has Become Due - IBC 2016, Sale Goods Act, Etc.
- A Statement of Form 5A bank statement of the account maintained by the Operational Creditor in respect of the Corporate Debtor.
- List of other Documents Attached to this Application in Order to Prove the Existence of Operational Debt and the Amount in Default- Statement of Account is attached.

7. SUBMISSIONS OF PETITIONER:

7.1 It is stated that the Operational Creditor and the Corporate Debtor executed a License Agreement dated March 4, 2015, amended vide Amendment License Agreement dated February 20, 2018 and a Supplementary Agreement dated June 9, 2020 (collectively referred to as "License Agreements"), whereby the Corporate Debtor was granted exclusive license to brew, bottle, package, promote, market, distribute and sell the Operational Creditor's branded products within the territory of Tamil Nadu, India.

7.2 It is stated that the present Operational Debt has arisen with regard to the default in payments with respect to royalty, the interest on delayed royalty

payments, Bottle sale costs and Bottle Underwriting costs, which are due and payable as per the Agreements entered into between both the parties.

7.3 It is stated that the Corporate Debtor was contractually obligated as per the License Agreements to make payment of royalties and other charges/amounts to the Operational Creditor in accordance with the terms of the License Agreements. The terms of the License Agreement were also extended till 15.04.2023 by way of Supplementary Agreement dated 09.06.2020.

7.4 It is stated that the Corporate Debtor had previously failed to honour the terms of the License Agreements and miserably failed to pay the operational debt due under the various heads to the Operational Creditor for the period between May 2020 till August 2021, causing severe hardship to the Operational Creditor. Multiple reminders were sent by the Operational Creditor to the Corporate Debtor, and several discussions were held towards clearing of the outstanding dues. However, the Corporate Debtor failed to clear its outstanding dues arising out of the License Agreements. Seeing the state of the Corporate Debtor and it being unable to honour its commitments and make payments, this Operational Creditor initiated Corporate Insolvency Resolution Process ("CIRP") under Section 9 of the IBC against the Corporate Debtor in October 2021 for a debt and default of Rs. 11,98,15,091/- as on date of filing the Petition as on date of filing the Petition and the said petition was

numbered as *C.P.(IB).No.287(CHE)/2021* before the National Company Law Tribunal, Chennai ("NCLT").

7.5 It is stated that the Corporate Debtor after the filing of the petition under Section 9 of the Code in October 2021, Corporate Debtor filed its Reply to the Petition and subsequently, the Operational Creditor had filed its Rejoinder as well. As the matter before the NCLT, Chennai was ripe for arguments and neared completion, the Operational Creditor expressed its intention to negotiate and settle the matter before being sent into CIRP and to continue its business relations. The Operational Creditor, being witness to the conduct, declining financial health and stability of the Corporate Debtor, was initially hesitant to the same. However, based on the several persistent representations, assurances and promises to settle the dues, and to bring a quietus to the issue, the Parties entered into mutual discussions towards the settling of the dues of the Corporate Debtor.

7.6 It is stated that pursuant to the discussions, the Settlement cum Guarantee Agreement ("the Settlement Agreement") was executed on 16.11.2022 between the Parties for a full and final settlement of Rs. 14,21,06,427/- payable by the Corporate Debtor on or before 31.12.2022 under various heads as stipulated under clauses 1-6 of the Settlement Agreement. Further, Mr. Sundeep Anand Jagathrakshagan ("Guarantor") stood as personal guarantor for the Corporate Debtor and the same has been recorded

in the Settlement Agreement. The copy of the Settlement Agreement dated 16.11.2022 is annexed as **Annexure II-[14]**. It is further stated that the upon execution of the Settlement Agreement, a memo of withdrawal was filed before the NCLT, Chennai Bench and the proceedings in *C.P.(IB).No.287(CHE)/2021* was dismissed as "Withdrawn" on 13.01.2023.

7.7 It is stated that the Corporate Debtor belatedly met its obligation under the Settlement Agreement to make payment of Rs. 14,21,06,427/- on 16.03.2023. As part of the then ongoing settlement attempts it was mutually decided that the Corporate Debtor would continue operating under the original license agreement from September, 2022 and subsequent to the execution of the Settlement Agreement, as part of its obligations under Clause 4 therein, the original license period was effectively extended for completion of the obligations contained in the said agreement. It is further stated that the Several reminders were sent to the Corporate Debtor, for the outstanding dues. After much insistence, the Corporate Debtor made the following ad-hoc payments:

<i>Dates</i>	<i>Amount</i>
16.04.2023	20,00,000
23.08.2023	20,22,788/-
27.09.2023	25,00,000/-
31.10.2023	3,50,763/- and Rs. 46,49,237/
Total	1,15,22,788

7.8 It is stated that the aforesaid amounts did not accompany any instructions from the Corporate Debtor and therefore were adjusted against the outstanding principal and interest amounts on the royalty invoices as on date of receiving payments as detailed in the statement of dues provided hereto.

7.9 It is stated that the Corporate Debtor is thus liable to make payments for the remainder of its liability arising out of the License Agreements and the Settlement Agreement to the tune of Rs. 6,69,03,472/- (towards royalty amounts); Rs. 5,19,785/- (towards bottle sales) and Rs. 1,46,90,732/- (towards interest on delayed royalty payments and bottle sales till 11.06.2024).

7.10. It is stated that the with regard to the amounts due from the bottle underwriting cost, the Corporate Debtor is to provide on a monthly basis, the production and sales plan for development of Bottle Requirement Plan ("BRP"). Basis the said BRP, the Parties were to finalise the bottle underwriting cost involved. However, the Corporate Debtor has not shared any data with the Operational Creditor regarding the bottle consumption/purchase rate/loss rate etc., till date despite the same being requested several times. Despite the Operational Creditor having requested for the data under both these heads several times from the Corporate Debtor, the Corporate Debtor has purposely withheld the said details, thereby denying the Operational Creditor of its legitimate dues. The Operational Creditor has calculated the tentative amount

of the bottle underwriting costs basis the limited information available with it aggregating upto Rs. 3,06,40,066/- and hereby reserves its rights to claim the amounts which may become due after the Corporate Debtor shares the required information.

7.11. It is stated that the, in view of the unpaid Operational Debt and for adhering to and with the provisions of the Code, and given the utter silence on part of the Corporate Debtor and its utter failure to make the payment as required under the License Agreements, the Operational Creditor was constrained to issue a demand notice under the Code on 11.08.2023. The copy of the Form - 3 Demand Notice dated 11.08.2023 is annexed as **Annexure – II [17]**. The Corporate Debtor, thereafter, made further ad-hoc payments of Rs. 20,22,788/- on 23.08.2023, Rs. 25,00,000/- on 27.09.2023, Rs. 3,50,763/-, and Rs. 46,49,237/- on 31.10.2023 without any instructions on adjustment.

7.12. It is stated that the Lackadaisical approach of the Corporate Debtor coupled with the mala fide intention is very well inferred from the fact that the Corporate Debtor has defaulted in clearing the legitimate dues of the Operational Creditor granting several opportunities to the Corporate Debtor to clear its dues. This clearly shows inability of the Corporate Debtor to honour its commitment under the License Agreements and that the Corporate Debtor has consistently failed to meet its admitted obligations and payment deadlines. The Operational Creditor has clearly established the debt and

default of the Corporate Debtor and has also established that the Corporate Debtor is in dire need of a Corporate Insolvency Resolution Process. In view of the continued defaults of the Corporate Debtor, all business transactions were also stopped with the Corporate Debtor.

7.13. It is stated that the Corporate Debtor is thus in gross and consistent violation of and default of payment towards its obligations arising out of the License Agreements as well as the Settlement Agreement. Hence, a fresh demand dated 20.06.2024 was issued by the Operational Creditor towards the outstanding amounts for Royalty Invoices, Interest on delayed Royalty payments, Bottle underwriting costs and Bottle Sales to the Corporate Debtor. The said demand was issued in Form III as it involved outstanding dues payable against invoices viz., Royalty Outstanding, Bottle sales costs and interest on the same and outstanding dues towards Bottle Underwriting Costs calculated as per the details available with the Operational Creditor. It was issued on 20.06.2024 and no reply or repayments have been received after such demand. The Form III dated 20th June 2024 along with postal acknowledgement is annexed herewith as **Annexure I-[2]**. It is further stated that the record of default was also maintained with the information Utility Services viz., NESL.

7.14. It is stated that the default of the Corporate Debtor arose on 30.09.2022, when the invoice bearing No. *PSI/HO/2223/0018* for outstanding royalty

payments became due for payment and continues till present date. The default is subsisting and continues and exists as on date of the filing the present petition before this Adjudicating Authority as the Corporate Debtor has defaulted on several invoices.

7.15. It is stated that the total amount of outstanding operational debt which the Corporate Debtor is liable to pay to the Operational Creditor as on is as follows:

- a. Rs. 6,69,03,472/- towards royalty due and outstanding (on a running account basis) for the period between September 2022 till September, 2023 in accordance with Clause 13 and Schedule D of the License Agreement dated 04.03.2015 and Clause 4(a) and Clause (6) of the Settlement after adjusting adhoc payments of 20,00,000/- paid on 16.04.2023, Rs. 20,22,788/- on 23.08.2023, Rs. 25,00,000/- on 27.09.2023, Rs. 3,50,763/-, and Rs. 46,49,237/- on 31.10.2023, in total a sum of Rs. 1,15,22,788/- by the Corporate Debtor without instructions on adjustments, and hence adjusted towards interest and principal on the royalty outstanding.
- b. Rs. 5,19,785/-, towards bottle sales for the period calculated as of February, 2023.
- c. Rs. 3,06,40,066/- towards Bottle underwriting costs calculated as per the data available with the Applicant and as provided for under Clause 29 added to the original agreement vide Clause C of the Supplement Agreement dated 04.03.2015.
- d. Rs.1,46,90,732/- towards the interest on delayed royalty payments and bottle sales calculated from the specified dates of default in payment in accordance with Clause 13.3 of the License Agreement till 11.06.2024.

7.16. It is stated that the details of the unpaid operational debt in due from the Corporate Debtor, as on [11.06.2024] is provided below:

Particulars	Amount in Rupees
Royalty Invoice overdue	6,69,03,472/-
Bottle Sales invoice overdue	5,19,785/-
Interest overdue on royalty and bottle sales invoices till 11.06.2024	1,46,90,732/-
Bottle Underwriting cost overdue	3,06,40,066/-

Total Amount Outstanding as on 11.06.2024	11,27,54,055/-
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8. SUBMISSIONS BY RESPONDENT:

8.1. It is stated that the alleged claim made by the Operational Creditor fails to qualify as an "Operational Debt" under the provisions of the Insolvency & Bankruptcy Code 2016. The Corporate Debtor states that as claimed by the Operational Creditor in its Company Petition, the said alleged Operational Debt arises on account (i) Royalty Payments (ii) Bottle Sales (iii) Bottle Underwriting, which does not in any manner evidence any services or supply of goods by the Operational Creditor to satisfy the definition of an "Operational Debt" under section 5 (21) of the Insolvency & Bankruptcy Code 2016. The Corporate Debtor states that it is an admitted position of the

Operational Creditor that the Corporate Debtor has been granted the license to "brew, bottle, package, promote, market, distribute and sell" the branded products of the Operational Creditor which does not tantamount any service or supply of goods by the Operational Creditor.

8.2. It is stated that the said alleged invoices provided at page 57 to 69, 70 to 72, of the Company Petition, only refer to "Royalty Payments" and "Bottle Recycling" evidencing no services or supply of goods by the Operational Creditor. The Corporate Debtor states that the Operational Creditor has not filed or raised any invoices towards "Bottling Underwriting Costs" along with the Company Petition. The Corporate Debtor reiterates that a perusal of the Company Petition filed by the Operational Creditor does not contain a single averment of any services or supply of goods towards the Corporate Debtor. The Corporate Debtor states that there being no "Operational Debt", the Petitioner miserably fails to qualify as an "Operational Creditor" under section 5 (20) of the Insolvency & Bankruptcy Code 2016 consequently rendering the present proceedings as non-maintainable and unsustainable in law.

8.3. It is stated that the without prejudice to the defense that the alleged claims do not qualify as an "Operational Debt", the Corporate Debtor submits that sufficient emails and communications were addressed to the Operational Creditor raising "dispute". The Corporate Debtor submits that emails were addressed to the Operational Creditor as early as 21st March 2022, raising

concerns to the Operational Creditor categorically requesting their support to enable production. It is stated that such disputes continue to subsist even today, wherein, due to the sole breach and non-cooperation of the Operational Creditor supplies as per the License Agreement dated 4th March 2015, Amendment Agreement to the License Agreement dated 20th February 2018, Supplementary Agreement dated 9th June 2020 and the Settlement Agreement dated 16th November 2022 were unable to be performed by the Corporate Debtor. It is stated that the Operational Creditor has now conveniently disregarding the disputes raised by the Corporate Debtor, conveniently have filed the present proceedings before this Tribunal.

8.4. It is stated that the, apart from the email dated 21st March 2022, several other communications have been issued by the Corporate Debtor which qualify as a "Dispute" under section 5 (6), 8 (2) (a) of the Insolvency & Bankruptcy Code 2016. The Corporate Debtor states the communications issued to the Operational Creditor warrant the dismissal of the proceedings sought to be initiated by the Operational Creditor before this Tribunal. The Corporate Debtor states that the dispute raised prior to the Demand Notice exists in the present facts and circumstances, which is sufficient for this Tribunal to dismiss the proceedings filed by the Operational Creditor. The Corporate Debtor states that reference is drawn the judgment of the Supreme

[AIR 2017 SC 4532], the relevant portion of which is extracted below:

It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

8.6. It is stated that the present proceedings lack valid legal foundation or basis for triggering proceedings against the Corporate Debtor under the Insolvency & Bankruptcy Code 2016 as the criteria for invoking the provisions of the Insolvency & Bankruptcy Code 2016 have not been met or satisfied in any manner whatsoever by the Operational Creditor. The Corporate Debtor submits that the claims of the Operational Creditor, in specific being, "Underwriting Costs" are not only frivolous but also inappropriate as this Hon'ble Tribunal cannot ascertain the liability or determine the validity of claims warranting trial and a proper examination of evidence and material. The Corporate Debtor further states that Operational Creditor's attempt to

make claims and allegations of non-payments based solely on limited information, without any concrete basis, amounts to an arbitrary and baseless claim without credible materials on record to substantiate the same.

8.7. It is stated that the contents of the Company Petition in Form 5 are disputed by the Corporate Debtor and are unsustainable in facts and law. The Corporate Debtor submits that it is going concern, solvent enterprise, housing significant business activities, and providing employment to several families in the State of Tamil Nadu. It is further states that the Corporate Debtor is one of the largest beverage manufacturers in the State of Tamil Nadu having great market value, respect and good will and cannot be subject to the frivolous proceedings initiated by the Operational Creditor.

8.8. It is stated that the "Ms. Ruchi Johnson" is not the authorized representative of the Operational Creditor, as no supporting document/authorization has been provided to tender valid authority to "Ms. Ruchi Johnson". The Corporate Debtor states that notably, the copy of the resolution passed at the 123rd Board Meeting of the Operational Creditor held on 14th February 2023 indicates that certain individuals including "Mr. Amit Sethi" were severally authorized to undertake various actions, including signing applications before courts and tribunals. The Corporate Debtor moreover submits that the resolution explicitly states that these individuals are authorized to delegate such authority through one or more power of

attorneys on a case-by-case basis to the officers and employees of the Operational Creditor.

8.9. It is stated that the Operational Creditor have themselves in the Company Petition stated that all dues as per the Settlement cum Guarantee Agreement dated 16th November 2022, has been discharged by the Corporate Debtor. The Corporate Debtor submits that the payments under the Settlement cum Guarantee Agreement dated 16th November 2022 establish the solvency and viability of the Corporate Debtor and therefore, the Corporate Debtor cannot be subject to the proceedings filed by the Operational Creditor. The Corporate Debtor further states that the constant recourse of invoking the provisions of the Insolvency & Bankruptcy Code 2016 only vindicates the stand of the Corporate Debtor that the Operational Creditor is abusing the due process and using this forum to extort monies from the Corporate Debtor. Hence this malicious proceedings initiated by the Operational Creditor ought to be struck down at the inception as it squarely abridges and infringes the provisions and purposes of the Insolvency & Bankruptcy Code 2016.

9. REJOINDER FILED BY PETITIONER:

9.1 It is stated that the Insofar as the averments in paragraph 6 of the reply are concerned, it is denied as false that the dues claimed in the present proceedings fail to qualify as an Operational Debt as defined under Section 5(21) of the Insolvency and Bankruptcy Code, 2016 ("Code") and it is denied

as false that the grant of license to the Corporate Debtor does not constitute a supply of goods or services by the Operational Creditor. It is further states that the insofar as averments in paragraph 7 are concerned, it is denied as false that the invoices provided at Pages 57 to 69, 70 to 72 of the present Petition referring to Royalty Payments, Bottle Recycling do not constitute a supply of goods or services. Furthermore, it is denied as irrelevant that no invoices have been raised towards Bottle Underwriting Costs.

9.2 It is stated that the agreements further stipulated that, analogous to the exercise of such rights, the Corporate Debtor would be responsible for paying the costs associated with the supply of bottles and towards bottle underwriting and these obligations, explicitly outlined in the agreements, remain uncontroverted and binding. It is further stated that the, in such circumstances, the defence that dues arising out of a licensing agreement of an intangible right fail to constitute an operational debt is misconceived and has already been negated in law. Although incorporeal rights capable of transfer, transmission and possess marketability have been long recognised as "goods", it is no more res integra that license agreements relating to the exploitation of such goods is an operational transaction.

9.3 It is stated that the in light of the foregoing, it is evident that the dues claimed by the Applicant arise directly from the provision of goods and services under the License Agreement and subsequent amendments, which

facilitated the Corporate Debtor's business operations. The grant of an exclusive license, coupled with the associated obligations such as minimum guaranteed royalty payments, bottle recycling, and underwriting costs, constitutes an operational transaction integral to the Corporate Debtor's commercial activities.

9.4 It is stated that the *Hon'ble NCLAT's judgment in Somesh Choudhary vs. Knight Riders Sports Put. Ltd 2022 ibclaw.in 603 NCLAT* unequivocally affirms that claims arising out of license agreements for the exploitation of intellectual property and related rights qualify as operational debts under Section 5(21) of the Insolvency and Bankruptcy Code, 2016. This precedent conclusively negates the misconceived defense that dues under a licensing arrangement of intangible rights fall outside the scope of operational debt. Accordingly, the Applicant qualifies as an Operational Creditor under Section 5(20) of the Code, and the dues claimed herein meet the statutory definition of Operational Debt. The defense raised in the reply in this regard are therefore baseless and untenable in law, warranting the admission of the present Application for resolution under the Code.

9.5 It is stated that the communications purportedly constituting the alleged dispute were admittedly exchanged between March and April 2022. In Part IV of the Application filed, the Applicant has detailed its earlier Petition under Section 9 of the Code in *CP/IB/287/(CHE)/2021* filed against the

Corporate Debtor on 08.11.2021. This Petition sought recovery of dues payable for the period between May 2020 and August 2021, despite multiple reminders. Notably, the emails now relied upon by the Corporate Debtor were issued during the pendency of the prior Petition, clearly as an attempt to fabricate a baseless defense of a dispute to evade the earlier proceedings when no such dispute existed.

9.6 It is stated that the Corporate Debtor's disingenuous strategy is further evident in its conduct during these proceedings, as demonstrated by the email dated 10.10.2024. This email, sent after the second hearing of the present petition, merely states, *"I am forwarding mail from the factory regarding supply of bottles from Carlsberg,"* without providing any substantive details or clarification regarding the alleged issue from 2022. This nondescriptive communication is nothing more than an eye wash, transparently designed to create a façade of a defense without any credible basis. It is further stated that, as evidenced by Form V, the Corporate Debtor voluntarily these alleged entered into the Settlement Agreement dated 22.11.2022, unequivocally undertaking its obligations without any reference to disputes. Neither does this agreement, executed in November, 2022 long after the emails in March, 2022, make any reference to the purported dispute nor are there any other material to establish that these issues existed between March, 2022 to

November, 2022. This strongly indicates that the alleged issue did not exist even at the point in time when it was raised by the Corporate Debtor.

9.7 It is stated that the mala fide nature of the Corporate Debtor's defense is further underscored by its failure to raise this purported dispute at any time between the execution of the Settlement Agreement on 22.11.2022 and the initiation of the present proceedings, despite being served with multiple reminders, and demand notices during this period. The email dated 10.10.2024, sent only after the second hearing of the present proceeding, is a transparent afterthought devoid of merit. The absence of any evidence to show the continued existence of these alleged disputes, coupled with the timing and pattern of the Corporate Debtor's conduct, conclusively demonstrates that this defense is a desperate, unsubstantiated, and sham attempt to evade its liabilities.

9.8 It is stated that the assuming without admitting the existence of the alleged dispute, it is unclear how the said dispute is connected to the present claim. The present claim pertains to invoices and dues that became payable between September 2022 and June 2024. The Applicant submits that de hors any dispute, the obligation to pay arises from the date of execution of these agreements whereby the Corporate Debtor has agreed to make payment towards Minimum Guarantee Royalty dues and other dues. Such obligation is therefore crystallised on the date of execution of the agreement. As previously

stated, the Corporate Debtor has failed to provide any material evidence demonstrating that this alleged dispute prevented it from fulfilling its payment obligations for the said period, which is the subject matter of debt in the present petition. It is further stated that the On the contrary, the Corporate Debtor has, without any protest, made ad hoc payments amounting to 1,15,22,788/-, with the last three tranches of payment being made subsequent to the issuance of the first demand notice dated 11.08.2023. These actions clearly indicate an acknowledgment of liability and undermine any claim of a bona fide dispute regarding the present dues. In fact, the present default has been duly recorded with the Information Utility in the month of April, 2024, and no record of dispute has been raised by the Corporate Debtor till date.

9.9. It is stated that the Insofar as the Bottle Underwriting dues are concerned, it has been specifically averred in the Application of the Applicant that the statement of dues payable towards the Bottle Underwriting Costs were calculated based on the information available with the Applicant as the Corporate Debtor has deliberately withheld the necessary details as it is required to disclose under the agreement between the parties. In any case, Annexure II (6-Series) filed along with the Application is a statement of these dues that were shared by the Applicant to the Corporate Debtor which till date have not been disputed. Infact, even in the reply under response, the Corporate Debtor has neither disputed these dues nor provided any contrary

material to disprove the same. It is once again reiterated that the dues payable towards the Bottle Underwriting Costs were separately logged with the Information Utility and no dispute has been recorded as against this information. The obligation to pay towards Bottle Underwriting dues undisputedly stem from the agreements between parties. The demand notice dated 20.06.2024, which was intentionally issued in Form III and not Form IV, specifically calls upon the Corporate Debtor to either clear these dues or provide a record of dispute to the Applicant, which the Corporate Debtor has failed to do. As such, it is clear that these dues are also undisputed and payable.

9.10. It is states that the vide Board Resolution dated 14.02.2023, the Applicant Company had duly authorised Mr. Amit Sethi and others to do the acts defined therein, which includes the initiation of insolvency processes such as the present proceeding and with the specific authority to further delegate such authority to one or more officers or employees of the Company for such matters. Mr. Amit Sethi, vide Power of Attorney dated 03.10.2023, making specific reference to the authority vested on him by the Applicant Company vide the Board Resolution dated 14.02.2023, specifically appoints Ms. Ruchi Johnson as his validly constituted Agent to do such acts as he is authorised to do in respect of the legal matters pertaining to the Applicant Company on behalf of the Applicant Company and not on his behalf. Mr. Amit Sethi, acting

as the Director-Legal of the Applicant Company has therefore delegated all his powers with respect to all legal matters pertaining to the Applicant Company to Ms. Ruchi Johson, who was also the Manager-Legal of the Applicant Company, thereby making her the Authorised Signatory of the Applicant Company. The deeds specified in Clause "c" and "d" of the Power of Attorney dated 14.02.2023 are not mutually exclusive of each other, are complementary and would constitute legal matters pertaining to the interests of the Company, which have been duly delegated to Ms. Ruchi Johnson by the Power of Attorney dated 13.10.2023.

9.11. It is stated that the this delegation, backed by both the Board Resolution and the Power of Attorney, effectively positions Ms. Johnson as the Authorised Signatory of the Applicant Company in legal matters. Her role is not limited to being Mr. Sethi's agent; rather, she operates under the authority conferred upon her by the Applicant Company through the chain of delegation. Consequently, Ms. Johnson is fully authorized to act on behalf of the Applicant Company in the present legal proceedings. The Applicant further submits that Ms. Ruchi Johnson possesses full knowledge of the facts and circumstances of the case, as she is an integral part of the Applicant Company's legal and administrative team managing the present dispute. This is evidenced by the detailed documents filed and verified by her in Form V, the Affidavit in Support of the Petition, and the Demand Notice issued under

Form III. All procedural requirements have been duly complied with, and the defense of alleged lack of authority is without merit. It is further stated that the in *Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407*, the Hon'ble Supreme Court held that the primary focus of the Insolvency and Bankruptcy Code, 2016, is on the resolution of genuine claims, and procedural defects cannot override the substantive merits of a Case.

9.12. It is stated that the where there exists an operational debt exceeding the statutory threshold and a default by the Corporate Debtor, any claims of solvency are irrelevant to these proceedings. The statutory presumption under the IBC arises from the existence of debt and default, not from baseless solvency claims and the applicant is not required to disprove the Corporate Debtor's solvency.

10. WRITTEN SUBMISSIONS OF PETITIONER/ OPERATIONAL CREDITOR:

10.1. It is stated that these submissions are confined to the Applicant's claim of Rs. 3,06,40,066/- (inclusive of GST of Rs. 46,73,908/-) towards Bottle Underwriting Costs for the period 01.07.2022 to 30.06.2023 (Form 5, Part IV, Typeset p. 20). It is the one head the Corporate Debtor still resists and the other three it has undertaken in its own pleadings to pay, Rs. 8,21,13,898/- "including interest charges except the 'Bottling Underwriting Charges'.

10.2. It is stated that the claim towards Bottle Underwriting Costs arises squarely from Clause 29 of the License Agreement dated 04.03.2015 (incorporated via Supplemental Agreement dated 09.06.2020) and stands reaffirmed under the Settlement Agreement dated 16.11.2022. The contractual mechanism operates as a year-end reconciliation whereby the benchmark underwritten cost (Rs. 70 per case) is balanced against the actual bottle cost incurred by the Corporate Debtor. If the actual cost falls below the benchmark, the differential is contractually mandated to be added to the royalty payable by the Corporate Debtor to the Licensor.

10.3. It is stated that the every factual and volumetric input utilized in the Applicant's computation derives directly from undisputed transactions and contractual covenants. The total volume of 14,57,635 cases is extracted from the monthly royalty invoices for July 2022 to June 2023, which the Corporate Debtor accepted and paid without demur. Applying the contractual bottle-loss allowance of up to 2% yielded a requirement of 14,87,383 cases' worth of bottles. While the Corporate Debtor defaulted on its reciprocal obligation under Clauses 29(c) and 29(d) to disclose actual purchase data, the Applicant computed the differential adopting the established recycled-bottle baseline of Rs. 48 per case (Rs. 4 per bottle), arriving at a crystallised liability of Rs. 3,06,40,066 (inclusive of GST).

10.4. It is stated that the applicant consistently communicated this calculation and afforded numerous opportunities to the Corporate Debtor to reconcile or furnish actual purchase invoices. Despite seven specific communications between June and August 2023, the recordal of default with the Information Utility (NeSL) on 04.03.2024, and the issuance of the statutory demand notice under Section 8 (Form 3) on 20.06.2024, the Corporate Debtor registered neither an objection nor a notice of dispute. A bare denial emerged for the first time in its Counter Statement sixteen months later, accompanied by unpleaded and irrelevant documents in *IA No. 1412/2025* that neither challenge the computational basis nor disclose contemporaneous bottle purchases.

10.5. It is stated that this liability follows a chronic pattern of default, identical to the past claim of Rs. 3,53,29,784 under the very same clause, which the Corporate Debtor admitted and satisfied under the Settlement Agreement dated 16.11.2022. The Corporate Debtor's current attempt to brand the claim as "uncrystallised" or "preliminary" merely capitalizes on its own deliberate omission to provide raw usage figures, violating the established maxim that no party can benefit from its own wrong.

10.6. It is stated that the as regards, the further contention that Bottle Underwriting is not operational debt because it is not represented by a sale invoice mistakes the Code. If it were right, Form 3 would have no purpose.

Rule 5(1) of the Application to Adjudicating Authority Rules, 2016 prescribes two forms because operational debts come in two kinds: those represented by an invoice (Form 4) and those which are not (Form 3), the latter proved by other material evidencing debt and default. The Supreme Court has reiterated that a demand notice need not carry an invoice where the debt arises under a contract and has read “in respect of” in Section 5(21) broadly and purposively (*Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions (P) Ltd.*, (2022) 7 SCC 164). The Applicant chose Form 3 for exactly this reason, supported by the Agreements, the working, the correspondence and the NESL record. A claim arising under a licence to brew, bottle and sell the licensor's branded products is an operational debt (*Somesh Choudhary v. Knight Riders Sports (P) Ltd.*, CA (AT)(Ins.) No. 501 of 2021, NCLAT; Rejoinder pp. 2–4), and Clause 29 is part of that same licence, expressly folded into the royalty payable.

10.7. It is stated that the claim constitutes an operational debt within the meaning of Sections 3(6), 3(11), and 5(21) of the Insolvency and Bankruptcy Code, 2016, as it represents consideration contractually embedded into the royalty structure, requiring no separate adjudication of damages. The debt having crystallised strictly pursuant to the agreed contractual formula, the belated and evasive stance adopted by the Corporate Debtor does not disclose any genuine pre-existing dispute.

FINDINGS OF THIS TRIBUNAL:

11. We have heard the learned Counsels for both the parties and perused the documents on record.

12. The present Company Petition has been filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor for default in payment of operational debt.

13. In the present case, the contention of Operational Creditor is that the present Operational Debt has arisen with regard to the default in payments with respect to royalty, the interest on delayed royalty payments, Bottle sale costs and Bottle Underwriting costs, which are due and payable as per the Agreements entered into between both the parties and the Corporate Debtor was contractually obligated as per the License Agreements to make payment of royalties and other charges/amounts to the Operational Creditor in accordance with the terms of the License Agreements. The terms of the License Agreement were also extended till 15.04.2023 by way of Supplementary Agreement dated 09.06.2020.

14. It is stated that the Corporate Debtor made ad hoc payments aggregating to Rs. 1,15,22,788/- on various dates namely, Rs. 20,00,000/- on 16.04.2023; Rs. 20,22,788/- on 23.08.2023; Rs. 25,00,000/- on 27.09.2023; and two tranches of Rs. 3,50,763/- and Rs. 46,49,237/- on 31.10.2023 and therefore fresh demand notice on 20.06.2024 was issued after ad hoc payments aggregating to

Rs. 1,15,22,788/- . In the absence of specific appropriation instructions from the Corporate Debtor, the said remittances were adjusted against the outstanding interest and principal dues towards royalty. It is further submitted that the particulars of the unpaid operational debt due and payable by the Corporate Debtor, as on 11.06.2024, are set out herein below:

Particulars		Amount in Rupees
Royalty Invoice overdue		6,69,03,472/-
Bottle Sales invoice overdue		5,19,785/-
Interest overdue on royalty and bottle sales invoices till 11.06.2024		1,46,90,732/-
Bottle Underwriting cost overdue		3,06,40,066/-
Total	Amount	11,27,54,055/-
Outstanding	as on	
11.06.2024		

15. It is stated that the default of the Corporate Debtor arose on 30.09.2022, when the invoice bearing No. *PSI/HO/2223/0018* for outstanding royalty payments became due for payment and continues till present date. The default is subsisting and continues as on date of the filing the present petition before this Adjudicating Authority as the Corporate Debtor has defaulted on several invoices.

16. The Operational Creditor issued a Demand Notice in Form-3 under Section 8 of the Code on 11.08.2023. Despite receipt of the demand notice, the Corporate Debtor failed to liquidate the outstanding dues.

17. Per contra, the respondent's contention is that operational creditor's claims do not qualify as an "Operational Debt", the Corporate Debtor states that sufficient emails and communications were addressed to the Operational Creditor raising "dispute" prior to the demand notice and further states that emails were addressed to the Operational Creditor as early as 21st March 2022, raising concerns to the Operational Creditor categorically requesting their support to enable production. It is stated that such disputes continue to subsist even today, wherein, due to the sole breach and non-cooperation of the Operational Creditor supplies as per the License Agreement dated 4th March 2015, Amendment Agreement to the License Agreement dated 20th February 2018, Supplementary Agreement dated 9th June 2020 and the Settlement Agreement dated 16th November 2022 were unable to be performed by the Corporate Debtor.

18. The Respondent stated that the claims of the Operational Creditor, in specific being, "Underwriting Costs" are frivolous and cannot ascertain the liability or determine the validity of claims warranting trial and a proper examination of evidence and material. The Corporate Debtor further states that Operational Creditor's attempt to make claims and allegations of non-payments based solely on limited information, without any concrete basis, amounts to an arbitrary and baseless claim without credible materials on record to substantiate the same.

19. The Respondent stated that it is going concern, solvent enterprise, housing significant business activities, and providing employment to several families in the State of Tamil Nadu. It is further states that the Corporate Debtor is one of the largest beverage manufacturers in the State of Tamil Nadu having great market value, respect and good will.

20. The issue for consideration in the present case is whether there is an existing operational debt payable and whether there existed a pre-existing dispute prior to issuance of the demand notice under Section 8 of the Code.

21. It has been placed on our records that during the course of the proceedings, *IA(IBC)/1412(CHE)2025* filed by Corporate debtor for following relief:

“Applicant to place on record additional documents evidencing breach by the Respondent of the License Agreement dated 4th March 2015, Amendment Agreement dated 20th February 2018 and the Supplementary Agreement dated 9th June 2020 and consequently dismiss CP/(B)/170/(CHE)/2024”

22. During the course of the proceedings, it was submitted on behalf of the Corporate Debtor that it was willing to settle the outstanding dues of the Petitioner, excluding the bottle underwriting charges. In view thereof, this Tribunal, vide order dated 10.11.2025, directed both parties to report on the progress of the settlement and accordingly granted time.

23. By order dated 02.02.2026, this Tribunal directed the operational creditor to communicate to the Corporate Debtor its decision with respect to

any waiver / concession in relation to the Bottling Underwriting Charges forming part of the claim in the above proceedings. In compliance of the same, the operational creditor has filed a memo stating that it does not agree to any waiver, reduction or compromise in respect of the Bottle Underwriting Costs and that the claim would stand strictly as made in the petition, without modification or concession.

24. This Tribunal recorded the submission of the Corporate Debtor that a sum of Rs. 8,21,13,898/- had been remitted towards the operational debt vide order dated 24.03.2026, In furtherance thereof, the Operational Creditor filed a memo acknowledging receipt of the said amount of Rs. 8,21,13,898/-, while clarifying that the Bottle Underwriting Cost amounting to Rs. 3,06,40,066/- continues to remain outstanding and unpaid.

25. It has been placed on our records that the corporate debtor has paid Royalty Invoice Overdue, Bottle Sales Invoice Overdue amounting to Rs. 8,21,13,898/- except the Bottle underwriting cost amounting to Rs. 3,06,40,066/-

26. Adverting to the issue of 'Bottle Underwriting Costs', it is evident from the pleadings of the Operational Creditor itself that the said claim was computed on a purely tentative basis and on limited and incomplete information. Furthermore, the Operational Creditor has failed to place on record any cogent or substantiate material to establish and crystallize the said component as an operational debt due and payable under the Code.

27. An operational debt must be an ascertained, crystallized liability. A claim that is merely tentative, unliquidated, or an un adjudicated claim for damages/costs cannot constitute a "debt due and payable" to trigger insolvency under Section 9. It is a settled proposition of law that the summary jurisdiction under the Code cannot be invoked for an uncrystallised or tentative liability. A claim that has not attained finality or certainty does not satisfy the statutory threshold of a 'debt due and payable' under Section 3(11) read with Section 5(21) of the Code.

28. A perusal of the record reveals that the email communication dated 21.03.2022, alongside subsequent correspondences exchanged between the parties, sufficiently establishes the existence of a bona fide pre-existing dispute between the Operational Creditor and the Corporate Debtor, well prior to the issuance of the statutory demand notice under Section 8 of the Code. The rival contentions and disputed claims arising therefrom raise contentious issues that warrant detailed investigation and adjudication, which fall squarely outside the remit of the summary jurisdiction exercised by this Tribunal.

29. It is accordingly held that Corporate Debtor being a solvent company has discharged a substantial portion of the operational debt by remitting a sum of Rs. 8,21,13,898/-. With respect to the residual claim of Rs. 3,06,40,066/- towards 'Bottle Underwriting Costs', the record establishes that the same forms the subject matter of a bona fide pre-existing dispute subsisting between

the parties anterior to the issuance of the statutory demand notice under Section 8 of the Code.

30. The Hon'ble Supreme Court has repeatedly held that the Insolvency and Bankruptcy Code is not a substitute for a debt recovery forum and that the Adjudicating Authority is not expected to adjudicate disputed contractual claims in proceedings under Section 9. Once the material on record demonstrates the existence of a genuine dispute which is neither hypothetical nor illusory, the application is liable to be rejected.

31. The Hon'ble supreme court in *M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd. & Ors.* (2022 SCC OnLine SC 1385) held that the NCLT, exercising powers under section 7 and section 9 of IBC, is not a debt collection forum. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.

32. In the present case, having regard to the correspondence exchanged between the parties, the rival contractual claims, the plea of adjustment based upon the subsequent tender transaction, the detailed factual controversies raised by both sides, and the nature of the issues requiring adjudication, we are satisfied that there existed a real and bona fide pre-existing dispute with regard to bottle underwriting costs between the parties prior to issuance of the statutory demand notice. Consequently, the Operational Creditor has failed to

satisfy the jurisdictional requirement for admission of an application under Section 9 of the Insolvency and Bankruptcy Code, 2016.

33. The Hon'ble Supreme Court in *Kay Bouvet Engineering Ltd. vs. Overseas Infrastructure Alliance (India) Pvt. Ltd.*, (2021) 10 SCC 483, after considering the law laid down in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, reiterated that the Adjudicating Authority, while exercising jurisdiction under Section 9 of the Code, is not expected to adjudicate the merits of rival contractual claims. It was held that where the material placed on record discloses a real dispute which is not spurious, hypothetical or illusory, the application under Section 9 is liable to be rejected, as the Insolvency and Bankruptcy Code is not intended to be used as a substitute for recovery proceedings or adjudication of contractual disputes.

34. In view of the foregoing discussion, we are satisfied that the Corporate Debtor has established a genuine and bona fide pre-existing dispute with regard to bottle underwriting costs concerning the alleged operational debt and the dispute involves issues relating not only to the computation of the amount but also to the crystallisation, enforceability of operational debt.

35. Consequently, the ingredients for admission of the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 are not satisfied, the reliefs sought in *the IA(IBC) 1412/CHE/2025* Code stand answered and is disposed vide order 27.08.2026 by this Tribunal.

36. Accordingly, Company Petition **CP (IBC) / 170 (CHE) / 2024** is **Dismissed**

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)