IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.302
CP(IB) 812 of 2019

Proceedings under Section 9 IBC

IN THE MATTER OF:

Tetra-Pak India Pvt LTD .....**Applicant**
V/s
Manpasand Beverages Ltd .....**Respondent**

Order delivered on: 12/01/2026

Coram:
Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed before pronouncement of order.

The order is pronounced in open court vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

AD/SJ/AP

IN NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

CP (IB) No. 812 of 2019

(Filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

Tetra-Pak India Private Limited
Having its registered office at:
Plot No. B - 53, MIDC Chakan,
Phase - II, Village Vasuli, Taluka Khed,
District Pune – 410501

....Applicant/
Operational Creditor

V/s.

Manpasand Beverages Limited
Having registered office at:
1768 & 1774 Patki - 1,
Village Manjusar, Tal. Savli,
Vadodara, Gujarat – 391775

...Respondent/
Corporate Debtor

Order pronounced on 12.01.2026

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

DR. V. G. VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Parth Shah a.w. Ritwika Nanda, Adv.
For the Respondent : Mr. Yash Dadhich, Adv.

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JUDGEMENT

((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 Tetra-Pak India Private Limited, (hereinafter referred to as 'Operational Creditor') seeking to initiate Corporate Insolvency Resolution Process against Manpasand Beverages Limited (hereinafter referred to as 'Corporate Debtor').

2. Part-I of the Petition sets out of the details of the Operational Creditor. Tetra-Pak India Private Limited was incorporated on 01.12.1987 with CIN No. U21014PN1987PTC012926 and having its registered office at Plot No. B-53, Chakan MIDC, Phase-2 Tal- Khed, Village Vasuli, Chakan, Pune, Maharashtra – 410501. Part-II of the Petition sets out the details of the Corporate Debtor. Manpasand Beverages Limited was incorporated on 17.10.2010 with CIN No. U17119GJ1995PTC025300 and having its registered office at Gujarat Spun Pipe Compound, Padra Road, PO Samiala, Distt. Vadodara, Gujarat- 391410. In Part-III of the Petition the

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Operational Creditor has not proposed any Insolvency Professional to act as a Resolution Professional. However, vide affidavit dated 28.08.2023, the applicant has proposed name of Mr. Ajay Gupta as the IRP. Part-IV of the Petition states that the total outstanding Debt is Rs.25,34,69,071/- and the Date of Default is shown as April, 2018 onwards.

3. Part-V of the Petition describes the particulars of the Operational Debt, documents, records and evidence of the default. The applicant has inter alia attached documents in order to prove the existence of debt and default which are mentioned below:

a. Copy of the Standard Packaging Material Supply Agreement;

b. Copies of the Pricing Agreements along with a copy of the letter dated 23 March 2018;

c. Copy of the outstanding invoices under the Packaging Material Supply Agreement/ Pricing Agreements;

d. Copies of the Order confirmation for a value of INR 56,68,411/-;

e. Copies of the Equipment Sale Agreements;

f. Copies of the invoices duly raised and served upon the Corporate Debtor under the Equipment Sale Agreement(s);

g. Copies of the invoices duly raised and served upon the Corporate Debtor for the Services;

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h. Copies of the payment demand notices dated 03 June 2019;

i. Copy of the reply dated 18 June 2019 to the demand notice dated 03 June 2019;

j. Copy of the 2nd payment demand notice dated 03 July 2019;

k. Copy of the email dated 05 October 2019 along with the attached letter of extension;

l. Copy of the email dated 09 October 2019;

m. A tabulated sheet of the total debt.

4. The applicant stated that the corporate debtor had entered into two arrangements with the petitioner i.e. Standard Packaging Material Supply Agreement dated 01.01.2012 which was to automatically renew unless either party terminated the same and Equipment Sale Agreement(s), whereunder Tetra Pak supplied equipment to Manpasand on deferred sale basis to enable it to package certain food products. Additionally, Tetra Pak had also issued invoices for Services rendered by Tetra Pak to Manpasand from time to time.

5. It is stated by the applicant that under the Standard Packaging Material Supply Agreement, Tetra Pak supplied Packaging Material as and when a purchase order was

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submitted by Manpasand and the same was accepted by Tetra Pak. The pricing, payment and delivery terms read with the general terms and conditions under the Standard Packaging Material Supply Agreement were governed by separate packaging material price list of 01.12.2012 and 01.04.2016 executed between the parties ("Pricing Agreements"). Further, the Pricing Agreements were last amended in 2018 for carrying out changes to the pricing under the Standard Packaging Material Supply which was effective from 01.04.2018. It is stated that Manpasand after agreeing to the specific pricing under the Pricing Agreements, raised purchase orders and Tetra Pak supplied the required quantity. In terms of the accepted purchase orders, Tetra Pak issued invoices to the Manpasand. Under the Standard Packaging Material Supply Agreement, payments were to be made within 30 days from the date of invoice and a provision for levying overdue interest is provided at 1.5% per month.

6. It is stated that out of all the invoices raised by Tetra Pak upon Manpasand in relation to the Standard Packaging Material Supply Agreement, invoices for a value of Rs. 10,23,82,850/- remained unpaid and outstanding and interest to the tune of

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Rs. 89,71,995/- has accrued as on 21.09.2019, in terms of Clause 5 of the Pricing Agreements.

7. The applicant stated that the corporate debtor issued additional purchase orders under the Packaging Material Supply Agreement for an amount of Rs. 56,68,411/-. These purchase orders issued by Manpasand were confirmed as per the terms & conditions of the Packaging Material Supply Agreement by Tetra Pak. However, the Corporate Debtor has not taken the delivery of the material as per the purchase orders. Accordingly, this amount of Rs. 56,68,411/- is also due and outstanding.

8. The applicant further stated that fourteen Equipment Sale Agreements were executed between the parties. Tetra Pak supplied equipment to Manpasand on deferred sale basis to enable it to package certain food products. In case, the payment was not made in accordance with the deferred payment schedule, then Tetra Pak had the right to charge an interest on late payment at the rate of 1.5% per month. Delivery of the equipment was to be done in accordance with the delivery terms as specified within the respective

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Equipment Sale Agreements under the Price & Payment Terms.

9. It is stated that under the Equipment Sale Agreements the title/lien of the equipment's shall remain with Tetra Pak until full payment has been made by Manpasand in terms of the Equipment Sale Agreements, and until full payment is made, Manpasand shall not sell, transfer, lease, rent, charge, pledge or create any lien over the equipment. Tetra Pak served invoices upon Manpasand in order to recover the deferred payments and payments towards the planned commissioning work. The total dues towards the invoices raised under the Equipment Sale Agreements is Rs. 12,03,06,398/- and interest to the tune of Rs. 1,58,37,230/- has accrued as on 21.09.2019, in terms of Clause 4.1 of the Equipment Sale Agreements.

10. The applicant stated that apart from the Standard Packaging Material Supply Agreement and the Equipment Sale Agreements, Tetra Pak also issued invoices for the services that were rendered. In relation to the same, a principal sum of Rs. 2,73,723/- and an interest to the tune of Rs. 28,464/- is

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due as on 21.09.2020.

11. The applicant stated that the Corporate Debtor started defaulting in payments of the invoices under the Standard Packaging Material Supply Agreements, Equipment Supply Agreements and the invoices for services from April 2018 onwards. The applicant issued two payment demand notices dated 03.06.2019, in relation to the Standard Packaging Material Supply Agreement and Equipment Sale Agreements respectively calling upon the Corporate Debtor to make payment of the principal outstanding payable, excluding the interest. These notices were replied by the Corporate Debtor intimating about GST search and seizure proceedings, it did not dispute the debt owed and requested time and cooperation for settling accounts.

12. Further, as no payment was received towards the dues, Tetra Pak issued 2nd payment demand notice on 03.07.2019 which enumerated the collective dues of the Corporate Debtor under the Standard Packaging Material Supply Agreement and Equipment Sale Agreements. However, despite receipt of the 2nd Payment Notice, Corporate Debtor neither denied the dues

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nor paid to the Operational Creditor.

13. It is stated that the Operational Creditor, through its advocates, issued a demand notice under Section 8 of the Insolvency & Bankruptcy Code, 2016 for the total debt due from the Corporate Debtor as on 21.09.2019 to the tune of Rs.25,34,69,071/-, inclusive of interest of Rs.2,48,37,689/-. Out of which Rs.11,13,54,845/-, which includes the interest to the tune of Rs. 89,71,995/- under the Standard Packaging Material Supply Agreement; Rs.13,6143,628/-, which includes the interest to the tune of Rs. 1,58,37,230/- under the Equipment Sale Agreement; Rs.302,187/-, which includes the interest to the tune of Rs. 28,464/- towards invoices for Services; Rs. 56,68,411/- towards additional Packaging Material Supply.

14. Upon receipt of the above Demand Notice, the Corporate Debtor addressed an email on 05.10.2019 wherein it attached a letter seeking an extension of 60 days' time to repay the outstanding dues after ledger conciliation. Again, similar letter was sent on 09.10.2019 requesting 90 days' time. It is stated that the Corporate Debtor failed to repay the outstanding dues

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owed by it to Tetra Pak within a period of 10 days from the receipt of the Demand Notice. Hence, this petition was filed on 05.11.2019 seeking initiation of CIRP.

15. The Respondent has filed its reply on 28.08.2020 and stated that the petition is liable to be rejected on the ground of being defective and with pre-existing disputes. It is stated that the Petitioner has failed to place on record any document wherein M/s. Desai & Dewanji was authorised by the Petitioner to issue alleged Demand Notice dated 27.09.2019. Furthermore, the letter dated 23.10.2019 was issued subsequent to the Demand Notice. Therefore, at time of issuance of Demand Notice, no authorisation was given to M/s. Desai & Dewanji. Demand Notice dated 27.09.2019 issued by the Petitioner was issued without authority and hence shall be construed to be defective. Further, the Petitioner has also failed to produce on record an Affidavit of No Dispute in accordance of Section 9(3)(b) of IBC along with the present Petition. The date of incorporation mentioned by the Petitioner in Column No. 3 of Part-II of the Petition is 17.10.2010, however, as per the Master Data produced by the Petitioner at Page 41 reflects the date of incorporation as 17.12.2010. Therefore, it is mentioned

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incorrectly. This petition for alleged non-payment is arising out of different agreements and purchase orders. Despite having different agreements and purchase orders, the Petitioner has wrongly clubbed alleged claims arising out of different agreements and purchase orders to file the present Petition. The Petitioner has wrongly clubbed different causes of action for file a single Petition, the same is not impressible in law.

16. The Corporate Debtor stated that the Petitioner has entered into two different agreements i.e. Standard Packaging Material Supply Agreement ("Supply Agreement") and Equipment Sale Agreement ("Equipment Agreement"). The Supply Agreement was executed on 01.01.2012 and it was agreed between the parties that the same will be renewed after every year, subject to termination by any party. The parties under the Supply Agreement agreed that it is only upon a valid purchase order that supply of packaging material was to be made. The issuance of the purchase order was an additional step agreed between the parties apart from the Supply Agreement. In addition to this under the Clause 4 of the Supply Agreement, it was agreed between the parties that purchase order will be

accepted only after executing a valid Packaging Material List Agreement ("Price List Agreement") and the Price List Agreement was executed on 01.01.2012 which was later renewed on 01.04.2016 by executing a new Agreement, which was only applicable for period 01.03.2017 to 31.12.2017. The Petitioner later vide letter dated 23.03.2018 has amended the Price List for the period of 01.04.2018 to 31.03.2018.

17. Further, the alleged invoices raised by the Petitioner are raised for period between 05.01.2019 to 18.04.2019, which have reference to the purchase orders, however, in the absence of a Price List Agreement no purchase orders were to be issued, in consequence, no packaging material was to be supplied in the absence of a valid purchase order. The Petitioner has also failed to place of record the purchase orders issued to the Petitioner by the Respondent. Therefore, nothing has been placed on record which can substantiate that the Respondent has sought supplies of the packaging material by placing purchase orders. In addition to the same, nothing is placed on record to show that the packaging material was received by the Respondent, no delivery challans or lorry receipts have been placed on record, which reflects acknowledgement of receipt of

material. The Petitioner has only produced one Order Acknowledgment which was generated by the Petitioner itself, however, no copy of the purchase order was submitted by the Respondent. The respondent also stated that there is mismatch in the total of the bills annexed with the petition. In respect of claim for Rs.56,68,411/- admittedly no delivery has taken place.

18. The respondent stated that the Petitioner has alleged claims arising out of Equipment Agreement as well, however, failed to place on record the a copy of one of the Equipment Sale Agreement bearing Reference No. 2017legal/ agr/33 dated 26.07.2017, thus no amount can be due and payable in absence of Equipment Agreement being placed on record. Further, the Petitioner had delayed several times while supplying the material, the material supplied earlier was also of sub-standard quality and were not as per the specifications of the Respondent. Owing to the sub-standard and defective material supplied by the Petitioner with faulty supply of relevant parts/tools, led to delay in production of the Respondent. In terms of the Equipment Agreement, the parties were to sign a performance test certificate upon completion of

the performance tests for the equipment to be supplied. However, no such certificate was signed by the parties.

19. The respondent stated that it has communicated to the Petitioner for replacement of faulty parts and the Petitioner delayed in resolving the issue. The Respondent has incurred heavy losses and damages owing to the delay in production solely on the account of Petitioner. Thereafter, the Petitioner also raised several credit notes for December 2018 to February 2019 and copy of only credit note for Rs. 3,28,573/- has been placed on record by the Petitioner. Further, the Petitioner has itself accounted for Rs.2,82,63,216/- towards credit notes which is evident the tabulated sheet of alleged debt. The respondent stated that a claim of Rs. 3,02,187/- was raised towards services rendered by the Operational Creditor. However, except invoices there is nothing on record to suggest that the Respondent had sought the alleged services. It is stated that the applicant has issued the demand notices in any opportunistic manner during the period of prevailing issues due to GST search and seizure proceedings.

20. The respondent stated that no debt is payable. The

Respondent has called for reconciliation of ledger multiple times to the Petitioner on 18.06.2019, 05.10.2019 and 09.10.2019, however, Petitioner has never reconciled the ledger and has misused the communications to mislead the Hon'ble Tribunal into believing that Respondent has admitted the alleged debt. Corporate Debtor had also raised a dispute vide letter dated 06.11.2019, wherein a counter claim to the tune of Rs. 13,59,23,135/- was raised. Petitioner has only provided price support amounting to Rs. 50,00,000/- which was promised in year 2015 and has miserably failed to honor its promise Vide reply letter dated 14.11.2019, the applicant has not considered the counter claim and termed it as an afterthought. It is an undisputed fact that the Respondent has paid more than Rs.200 Cr to the petitioner since 2012. The terms of the Equipment Agreements provides that the Petitioner hold and an exclusive lien on the equipment until full amounts against the agreement is received and that Petitioner is entitled to either reposes the equipment or withhold future performance. However, the Petitioner has failed to exercise any of such rights and has failed to adopt the proper cause of action before filing this Petition.

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21. It is stated that Corporate Debtor had also made payments to the tune of Rs. 1,60,00,000/- between the duration of January 2020 to March 2020 in full and final settlement, after considering the counter claim, an amount to the said extent was remaining payable as per the books of accounts maintained by the Corporate Debtor. The reply letters to demand notices was limited to seeking ledger conciliation and is not admission of debt. It is stated that disputes under the agreement should be referred to arbitration in accordance with the terms of the agreements. It is also stated that the Corporate Debtor is a viable and solvent entity and as on date is a going concern. The respondent prayed to dismiss this petition.

22. The applicant has filed its rejoinder on 15.10.2020 and by way of same has denied the contentions made in the reply. The applicant stated that the demand notice issued by the advocate on behalf of the applicant is proper and the issue regarding this is no longer res integra and has already been settled. Further, in respect of the affidavit of no dispute no dispute in accordance with section 9(3)(b)of the Code along with non-receipt of volume 6, 7 & 22 of the application. The

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applicant stated that the affidavit is filed with the application. In respect of the issue regarding clubbing of different cause of action in single petition, the applicant stated that it is permissible, within pecuniary jurisdiction and the relief sought under the petition are intrinsically interconnected. The applicant has produced a copy of letter dated 17.12.2018 which mentions that the pricing agreement of 2018 which is valid upto 31.12.2018, the same rates to apply till 30.06.2019. A copy of Equipment Sale Agreement bearing Reference No. 2017legal/ agr/33 dated 26.07.2017 is also attached.

23. The applicant has further dealt with the issue of pre-existing dispute and no debt which is due and payable. It is stated that upon learning of the filing of the captioned petition (as advance service was made), Corporate Debtor issued a dispute notice on 06.11.2019. Operational Creditor issued a response dated 14.11.2019 stating it to be an afterthought. Corporate Debtor issued a letter on 16.01.2020, wherein they admitted their dues and proposed a plan for consideration and acceptance of the Applicant for repayment. Subsequently, on 20.01.2020, Mr. Abhishek Singh of the Respondent had issued an email to the Applicant wherein the Respondent while writing in

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reference to the 'outstanding dues' stated that, *"The equipment which were supplied on deferred sale basis under the Agreements and as per our obligations under the Agreements, until payment of full price payable for the equipment, Manpasand shall not sell, transfer, lease, rent, charge, pledge or create any lien or any encumbrance on the equipment in favour of any third party over the equipment."*

24. The applicant further stated that the Respondent sent another email dated 23.01.2020 with the stamped and scanned copy of the letter dated 16.01.2020. It was upon the understanding to repay the old dues; the Respondent requested the Applicant to *"dispatch 2 truck of TCA as per our telephonic conversation as we and the market are waiting eagerly to resume supplies. This will be a booster shot for our market and I am sure that we can cross 1 crore cases volume in this year and create history together."*

25. The applicant stated that the Respondent, in order to pay the outstanding debt and in order to secure additional packaging materials from the Applicant, paid Rs.1,10,00,000/- in parts to the Applicant on 08.01.2020, 17.01.2020 and 20.01.2020

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whereby, Rs.54,00,000/- were adjusted against the outstanding dues. Additionally, as agreed between the parties, supplies worth Rs.56,00,000/- were supplied in terms of the material lying in stock. The same has never been objected by the Respondent. Further, on 02.03.2020, the Respondent paid Rs.50,00,000/-, whereby, as agreed between the parties, material worth Rs.35,00,000/- was supplied to the Respondent and Rs.15,00,000/- was adjusted against outstanding dues.

26. The applicant further stated that by way of reply filed belatedly before this Tribunal, the Respondent raised several disputes, which, have never been raised before. In order to substantiate a dispute, the Respondent has annexed a letter dated 06.11.2019, which has been issued after the statutorily mandated period of 10 days of issuance of the demand notice under Section 8 of the Code. The bank certificate issued and annexed with the Petition, further exhibits that payments were received till 29.01.2019. This is important as the last invoice as annexed is of 31.01.2019, thereby, exhibiting that the relationship between the parties was ongoing and no disputes were raised during this tenure. Further, no communication is

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annexed to exhibit that there was any dispute. Even though the reply stands in contrast to the communication between the parties, wherein, there is admission of debt, it is also stated that the Respondent has merely stated that there were pre-existing disputes but has not placed any document to establish its claim. Additionally, the Respondent has attached no proof that the payment has been made to the Applicant in terms of the outstanding detailed herein.

27. The applicant also stated that filing of invoices is a mandatory requirement along with other documents, which is essential to prove the debt. There are no other documents (such as purchase orders) which are to be mandatorily filed with the application in order to prove the existence of debt under Section 9 of the Code. The invoices, as has been annexed, bears the carrier name, vehicle number, mark Nos/ container Nos. & OTS Nos. Further, the invoices also detail the delivery No. and delivery date to the Corporate Debtor. No purchase order was physically issued, but a statement of order was uploaded on the e-business portal and each order was an e-business order. Without prejudice to the above, all the e-business orders are available on the platform with the

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customer, i.e., the Respondent and the invoices are only generated after the customer has reviewed the designs and other technical details on the portal and then, the order is received by the Applicant. If the Corporate Debtor had no alleged debt, then it is not understood as to why the Corporate Debtor has admitted the debt to the Applicant and paid an amount of Rs. 69,00,000/-towards the outstanding debt. The applicant therefore prayed to admit the petition.

28. The respondent has filed additional affidavit on 27.09.2025 and stated that the Corporate Debtor went into CIRP three times during the period of 01.03.2021 to 08.08.2025 and came out of CIRP. During the said period, the book of accounts, financial records and other necessary documents remained in the custody of the Interim Resolution Professional. The Corporate Debtor has filed Company Appeal No. 1462 of 2025 before Hon'ble National Company Law Appellate Tribunal, New Delhi ("NCLAT") challenging order dated 16.09.2025. The Hon'ble NCLAT, vide order dated 19.09.2025 granted liberty to Respondent to file and affidavit/Application placing on record additional documents. The respondent reiterated that no debt is payable by the respondent. It is stated that documents and

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records of account were unavailable for audit and it was only after conclusion of CIRP proceedings, Respondent commenced reconciliation and audit of accounts. The Respondent during the period of 01.01.2018 till the time of filing of present Petition had made payment of Rs. 36,39,79,437/- to the Petitioner, when the claim of the Petitioner is on Rs.22,87,59,846 towards alleged outstanding dues. The Respondent has also received a certificate dated 11.09.2025 from a practising Chartered Accountant certifying payment against all alleged invoices.

29. The Respondent has issued communications dated 16.05.2016 and 20.02.2017 informing Respondent of issues with faulty machines, poor services, non-availability of engineers of Petitioner and delay supply in packaging material which lead to additional cost borne by the Respondent. In addition, the Respondent again issued communications dated 12.01.2018 and 15.01.2018, informing Petitioner of issues of faulty machines and packaging material, delay in supply of machines parts and spares which had led to significant additional cost borne Respondent alone. The Respondent again issued a communication dated 05.01.2019 addressing

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the issue of non-supply of goods. The respondent again placed communication dated 06.11.2019 to the Petitioner raising dispute issue with respect to price support which was promised by the Petitioner in the year 2015.

FINDINGS OF THE TRIBUNAL

30. We have heard the learned Counsels for both the parties and perused the documents on record alongwith written submissions of the parties.

31. Background of the case is such that the respondent entered into the Standard Packaging Material Supply Agreement dated 01.01.2012 and 14 Equipment Sale Agreements from time to time with the applicant for supply of various materials and equipment used in Beverage Industry. It is stated that, pursuant to the agreement, the parties have also executed pricing agreements for relevant period. In relation to the Standard Packaging Material Supply Agreement, invoices for a value of Rs. 10,23,82,850/- remained unpaid and outstanding and interest to the tune of Rs. 89,71,995/- has accrued as on 21.09.2019, in terms of Clause 5 of the Pricing Agreements. It is also stated that the applicant has further provided

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additional purchase orders under the Packaging Material Supply Agreement for an amount of Rs. 56,68,411/- for which the Corporate Debtor has not taken the delivery. The total dues towards the invoices raised under the Equipment Sale Agreements is Rs. 12,03,06,398/- and interest to the tune of Rs. 1,58,37,230/- has accrued as on 21.09.2019, in terms of Clause 4.1 of the Equipment Sale Agreements. The applicant stated that certain services were also rendered. In relation to the same, a principal sum of Rs. 2,73,723/- and an interest to the tune of Rs. 28,464/- is due. As per the application the total outstanding Debt is Rs.25,34,69,071/- and the Date of Default is shown as April, 2018 onwards.

32. The applicant stated that pursuant to above agreements various invoices were raised. On account of default, the applicant has issued demand notices on 03.06.2019 and 03.07.2019. The respondent has replied to the said demand notice dated 03.06.2019, vide letter/email dated 18.06.2019. In reply dated 18.06.2019, the debt was not disputed by the respondent and it was stated that GST search and seizure proceedings has taken place at the Head office of the Corporate Debtor and the authorized person is taken in custody,

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therefore accounts cannot be settled and requested for cooperation. It was further stated that the accounts will be settled after the authorized person is available. Demand notice dated 03.07.2019 was not replied; the debt was neither denied nor paid to the Operational Creditor. Subsequently, the Operational Creditor issued demand notice under Section 8 of the Insolvency & Bankruptcy Code, 2016 on 27.09.2019 for the total debt due from the Corporate Debtor as on 21.09.2019 to the tune of Rs.25,34,69,071/-, inclusive of interest of Rs.2,48,37,689/-. In reply to above demand notice, the Corporate Debtor, on 05.10.2019, requested for extending time for payment of 60 days for clearing dues after ledger conciliation. The respondent has again sent a similar letter dated 09.10.2019 wherein it was stated that payment would be made within 90 days after settling the accounts or ledger conciliation. No dispute was raised or repayment made within 10 days.

33. The respondent has raised various issues including the petition being defective and some pre-existing dispute, the respondent has stated that the advocate who served the demand notice was not having any authority to send the same.

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However, we find that the advocate was appointed by the applicant and the demand notice is rightly issued. The respondent stated that the applicant has not filed affidavit of no dispute in accordance with section 9(3)(b) of the I.B. Code, 2016. It is also stated by the respondent that the applicant has not annexed agreement dated 26.07.2017 with the petition. Further, issue of no price list for 05.01.2019 to 18.04.2019 and clubbing of agreement is also raised.

34. In relation to above issues raised by the respondent, we find that the applicant has filed relevant affidavit under section 9(3)(b) of the I.B. Code, 2016. Further, agreement dated 26.07.2017 is also annexed with the rejoinder filed by the applicant. Besides this, the applicant has also produced letter dated 17.12.2018 which states that the rates for 2018 should apply till 30.06.2019. Therefore, the contention of the respondent that there is no price list agreement for 05.01.2019 to 18.04.2019 is not correct. Insofar as the question of clubbing of agreements is concerned, it is stated by the applicant that the transactions are intrinsically interconnected and within the pecuniary jurisdiction of this Tribunal. We find that the transaction which have occurred

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and the invoices that have been raised are in relation with interconnected transaction and therefore, this petition on the basis of separate agreements in relation to transactions of connected nature with the respondents is properly filed and there is no necessity of deciding the issue of existence of debt and default on each agreement separately since it is interconnected and with the same parties.

35. The respondent has stated that there was delay on part of the applicant, the material supplied was sub-standard and the equipment's were faulty. The respondent has relied on communication dated 16.05.2016, 20.02.2017, 12.01.2018, 15.01.2018 and 05.01.2019 in this regard. However, on perusing these communications, what appears is that the issues raised by the respondent are nothing but operational issues which may occur on day today basis and is not something significant. Even otherwise, the respondent has explicitly acknowledged the debt in its subsequent letters dated 16.01.2019.

36. The respondent stated that credit notes were issued but as such these credit notes would not have any impact until and

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unless the debt due is above the pecuniary limit. The respondent has time and again stated that the accounts were not reconciled and after reconciliation only payment was to be paid. The respondent has relied upon letter dated 06.11.2019 for raising a dispute on price support issue in respect of manufacturing activities which was made in the year 2015. In this regard the applicant has stated that this letter is a mere afterthought and was addressed on 06.11.2019, after filing of this petition on 05.11.2019, which is beyond 10 days limit as prescribed under Section 8 for raising any dispute. We note that the issue which the respondent has raised appears to be of the year 2015, however, for so long the respondent had remained silent and ultimately on 06.11.2019 after the filing of the petition has raised this issue which in our view is raised quite belatedly and for that reasons does not hold good.

37. The respondent has stated that payment of Rs. 1.60 crores was made between January 2020 to March 2020 as full and final settlement after considering the counter claim. The applicant has stated that this payment was made on account of new sales and partial adjustment of past dues in accordance with the understanding made in letters/e-mail dated

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16.01.2020 and 23.01.2020.

38. It is stated by the applicant that annexing invoices with the petition is mandatory and not purchase order and further stated that the orders were made by the respondent through E-business portal of the applicant and these orders were E-business orders and therefore, purchase order is not there. Also the invoices which are annexed with the petition bears details of delivery made, vehicle number, etc. which establishes that the delivery was made and the invoices are correctly raised on the basis of the agreements along with the prevailing price.

39. It is reiterated that the pursuant to demand notices raised by the applicant on 03.06.2019 and 03.07.2019, the respondent has replied to notice dated 03.06.2019 on 18.06.2019 without raising any dispute. Even after receipt of section 8 demand notice dated 27.09.2019, the respondent in reply on 05.10.2019 has sought extension of time for 60 days for clearing dues after ledger conciliation. The respondent has again sent a similar letter dated 09.10.2019 wherein it was stated that payment would be made within 90 days after

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settling the accounts or ledger conciliation. The respondent has not raised any dispute within 10 days, therefore, this petition was filed on 05.11.2019 and only after filing of this petition dispute was raised on 06.11.2019 regarding certain arrangement which was made in year 2015 regarding price support. Even after raising dispute on 06.11.2019, after filing of this petition, the respondent has addressed letters dated 16.01.2020 which in clear terms state that the respondent will pay the dues of the Operational Creditor.

40. It is observed that though the respondent has raised many issues, however, it has failed to state that why the respondent has made an admission for an amount of Rs. 11,16,57,032/-, in letter dated 16.01.2020. Further, in the said letter, the respondent has also agreed to an arrangement whereby out of 100% remittance which would be in advance, 30% amount should be adjusted towards claims and balance 70% should be adjusted towards purchase order for supply of packaging material. Another letter of 16.01.2020 acknowledges the outstanding of Rs. 13,61,43,628/- towards deferred payment for equipment's supplied. In this letter also the respondent has agreed to repay the amounts before September/December

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2020. In both the letters, it was agreed that until full payment is made by the respondent the proceedings before this Tribunal shall continue. On the basis of this arrangement only, certain supply has taken place afterwards which was requested as per e-mail dated 23.01.2020. In these circumstances the issues raised by the respondent goes against its own letters dated 16.01.2020, which was written after the filing of this petition and seems to be frivolous and an afterthought to raise an imaginary dispute. At the time of filing this application the threshold limit for filing application for initiating CIRP was Rs.1 Lakh which was revised to Rs.1 Crore by a government notification on March 24, 2020. The underlying default is therefore established without any dispute.

41. Taking into consideration the facts and circumstances of the case, as well as the position of Law, we are of the view that the petition filed by the Operational Creditor, shall be admitted.

42. Hence, we pass the following order:

ORDER

i) CP(IB) No. 812 of 2019 is admitted.

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ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

a) the institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the Respondent/Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the Respondent/Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent/Corporate Debtor.

iii) The order of moratorium shall have effect from the date of

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this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Respondent / Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

iv) We hereby appoint Mr. Darshan Bharatbhai Patel having Registration No. IBBI/IPA-001/IP-P01579/2018-2019/ 12442, E-mail: ca.darshanbpatel@gmail.com to act as an IRP under Section 13(1) (c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. regulations made thereunder.

v) The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the

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Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

vi) This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

vii) The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

viii) The IRP or RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

ix) It is further directed that the supply of goods/services to the Corporate Debtor Company if continuing, shall

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not be terminated or suspended, or interrupted during the moratorium period.

x) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

xi) The Operational Creditor is directed to pay an advance of Rs.2,00,000/- to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.

xii) The Registry is directed to communicate a copy of this order to the Financial Creditor, the Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working

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days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

Sd/-

DR.V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

GP-LRA