

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT)(Ins) No.503 of 2024

(Arising out of judgement and order dated 16.10.2023 passed by the adjudicating Authority, National Company Law Tribunal, New Delhi in CP(IB) No.540 of 2023)

In the matter of:

Indospirit Distribution Limited

Appellant

Vs

Kristal Spirits India Pvt Ltd

Respondent

For Appellant: Mr. Anand Shankar Jha, Ms Meenakshi S Devgan, Mr. Sachin Mintri, Mr. Abhilekh Tiwari, Advocates.

For Respondent: None.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

1. The present appeal is filed against an impugned order dated 16.10.2023 passed by the Hon'ble Adjudicating Authority, New Delhi in CP(IB) No. 540 of 2023 whereby the Ld. Adjudicating Authority dismissed Section 9 petition filed by the Appellant at admission stage itself by holding it as time-barred.

2. It is argued the Ld. Adjudicating Authority misinterpreted the Judgement passed by the Hon'ble Supreme Court in "*In Re: Cognizance for Extension of Limitation*" dated 10.01.2022.

3. It is argued the date of default admittedly is 01.11.2019 and the limitation period in normal course would have ended on 01.11.2022. However,

per judgement of Hon'ble Supreme Court In Re: Cognizance for Extension of Limitation dated 10.01.2022 wherein it has been stated the period from 15.03.2020 to 28.02.2022 stands excluded for purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings; the petition filed by the appellant was well within limitation, the relevant portion of the cited Judgement is as below:

".... I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

*...
IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*

4. Heard.

5. The limitation period for filing a Section 9 Petition under IBC is 3 years or 36 months. Now if the period from 15.03.2020 to 28.02.2022 is excluded then 23 months and 15 days stands excluded, and if the said 23 months and 15 days are excluded then total number of months remaining as on 28.02.2022 for the limitation to expire in the present case would be 31 months and 16 days which consequently would expire on 17.10.2024 and as Section 9 Petition was filed on 31.08.2023 it is well within the limitation period.

5. The Appellant categorically falls within the ambit of Para I of the said judgement whereby the period from 15.03.2020 to 28.02.2022 would stand excluded from the period of limitation. Even per Para IV of the judgement the limitation would extend. In Captain Sudhanshu Bhardwaj v. AIR India Limited (2023 SCC OnLine Del 8177), High Court of Delhi while interpreting the judgement of In Re: Cognizance for Extension of Limitation, expressly held that the period from 15.03.2020 till 28.02.2022 stood excluded for the purposes of the limitation. The court held:

“... 12. Thus, the entire period from 15.03.2020 to 28.02.2022 is required to be excluded in computing the period of limitation. It follows that the period of limitation would stop running on 15.03.2020 and would start running again on 01.03.2022. Consequently, the balance period of limitation remaining as on 03.10.2021 as contemplated in para 5 (II) would be the same as balance period of limitation remaining as on 15.03.2020.

13. It is incongruous to suggest that while the period from 03.10.2021 to 28.02.2022 is to be excluded for the purpose of calculating period of limitation, the same is not to be done for the period from 15.03.2020 to 02.10.2021. Doing so would be inconsistent with the plain language of para 5 (I) of the order dated 10.01.2022. ...”

6. Thus the period from 15.03.2020 to 28.02.2022 stood excluded for limitation purposes and it results in the enlargement of time of limitation. Delhi High Court, while propounding this position, placed reliance on the judgement of Prakash Corporate v. Dee Vee Projects Limited (2022 5 SCC 112) passed by the Hon’ble Supreme Court wherein the Hon’ble Supreme Court held:

“... “28 As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801], this Court provided that the period of limitation in all the proceedings, irrespective of that

prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15-3-2020 but, while concluding the matter on 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 : 2021 SCC OnLine SC 947], this Court specifically provided for exclusion of the period from 15- 3-2020 till 2-10-2021. A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed."

7. In the view of law settled above, we hold the petition under Section 9 IBC filed on 31.08.2023 is well within limitation, hence the petition is restored to its original number before Ld. NCLT. The appeal is thus allowed. Pending application, if any, are disposed of.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated: 09-01-2025

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