

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

Cont. A/4/2020

Khoday India Limited

Rep. by its Power of Attorney Holder,
Mr. Jaipal Reddy
Having its registered office at
"Bewery House", 7th Mile,
Kanakapura Road,
Bangalore – 560 062

... Petitioner / Applicant

-Versus-

S. Rajendran

Resolution Professional of
M/s. Empee Distilleries Limited
Having Office at
2nd Floor, Evalappan Mansion,
No.188/87, Habibullah Road,
T. Nagar, Chennai – 600 017

... Contemnor / Respondent

CORAM:

**JUSTICE (RETD.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant : A.G. Sathyanarayanan, Advocate
For Respondent : N.P. Vijay Kumar, Advocate*

*Order pronounced on **20th June 2022***

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

Under Consideration is a Contempt Application filed by the
Applicant under Section 425 of the Companies Act, 2013 read with
Rule 11, 13 and 14 of the NCLT Rules, 2016 seeking relief as follows;



- (i) Punishing the Respondent for contempt and will disobedience of the order / directions of this Hon'ble Tribunal dated 30.04.2019 passed in MA/407/2019.
- (ii) Directing the IBBI to initiate disciplinary proceedings against the Respondent in accordance with law; and
- (iii) For such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case

2. The Applicant herein is an Operational Creditor in respect of the Corporate Debtor viz. Empee Distilleries Limited. It was submitted that in the year 2015, the Applicant invoked the dispute resolution clause for initiation of Arbitration against the Corporate Debtor and one Mr. Justice (Retd.) K.P. Sivasubramanian was appointed as the Sole Arbitrator. It was submitted that during the pendency of the proceedings before the Arbitrator, the CIRP in respect of the Corporate Debtor was initiated by this Tribunal, hence the Arbitration proceedings were adjourned.

3. The Applicant submitted the Claim to the Respondent in Form B on 25.03.2019, with a delay of 54 days and hence the Applicant filed MA/407/2019 praying for condonation of delay of 54 days in filing the claim before the Respondent. In the said Application, this Tribunal has directed the RP to consider the Application in



accordance with law including in respect to the Arbitration proceedings pending before the Sole Arbitrator.

4. Thereafter, it was submitted that there was no correspondence from the Respondent and the Applicant was under bonafide belief that its claim was accepted. However, it was submitted that the petitioner was informed by the other creditors that some amounts were disbursed on account of a Resolution Plan approved for the Corporate Debtor.

5. It was submitted that in the list of creditors published on the website, the claim of the Applicant for a sum of Rs.41,44,33,059/- was shown as 'under verification'. Further, it was submitted that in the footnote it was stated that the claim is under litigation and that the RP could not determine the claim in view of the pending litigation. Under the said circumstances, it was submitted that the act of the RP in not verifying the claim of the Applicant was in violation of the order passed by this Tribunal dated 30.04.2019 in MA/407/2019.

6. The Respondent has filed counter and the Learned Counsel for the Respondent submitted that after analysing the documents filed by the Applicant, the conclusion arrived at by the Respondent was that no amount was payable by the Corporate Debtor to the Applicant and instead, the Applicant owed the Corporate Debtor a



sum of Rs.2.91 Crore. Further, it was submitted that the claim form of the Applicant was accepted and also certain clarifications were sought for by the Respondent and hence the Respondent has complied with the order dated 30.04.2019 passed by this Tribunal in MA/407/2019.

7. Heard the submissions made by the Learned Counsel for both the parties. It is seen that this Tribunal vide its order dated 30.04.2019 had directed the RP to consider the application in accordance with law including in respect to the Arbitration proceedings pending before the Sole Arbitrator. The Applicant has not placed on record any document to show that the RP has violated the said order dated 30.04.2019 passed in MA/407/2019. Also, no ground has been made by the Applicant so as to hold that the Respondent has violated the order dated 30.04.2019 passed in MA/407/2019. The Applicant, whose claim has been rejected by the RP is making futile attempt to agitate the issue before the Tribunal. No case of contempt has been made out by the Applicant. Hence the Application stands **dismissed**.

-SD-

ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-

JUSTICE (RETD.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Raymond