IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

C.P. (IB) No.217/BB/2020
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

Punjab National Bank
Large Corporate Branch,
Plot No.4, Sector, Dwarka,
New Delhi – 110 075. ... Petitioner/Financial Creditor

VERSUS

M/s. Apollo Distilleries
And Breweries Pvt. Ltd.
Midford, House Plot No.205-A,
II Floor, Amidford Gardens,
Bangalore – 560 001. ... Respondent/Corporate Debtor

Order delivered on 23.02.2022

Coram: 1. Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Mr. K.V. Shyam Prasad

For the Respondent : Mr. Rohan Rajasekaran

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ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Application has been filed by Punjab National Bank (for brevity 'Petitioner/Financial Creditor') through its Authorised Representative, namely, Mr. M. Sreenivasa Rao, under Section 7 of the IBC, 2016, r/w Rule 4 of the I&B (AAA) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process against M/s. Apollo Distilleries And Breweries Pvt. Ltd. (hereinafter called as 'Respondent /Corporate Debtor').
2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:
   i. **Punjab National Bank** is a body corporate constituted and established under the provisions of Section 3(4) of the Banking Companies (Acquisition and Transfer of Undertakings) Act 7 of 1970 bearing IFSC No. PUNB0030500.
   ii. **M/s. Apollo Distilleries And Breweries Pvt. Ltd.** is a Private Limited Company incorporated on 27.10.1995 under the Companies Act, 1956, bearing CIN: U85110KA1995PTC19074. The Authorized Share Capital of the Company is Rs.46,00,00,000/- (Rupees Forty Six Crore only) and Paid-up Capital is Rs.45,77,65,000/- (Rupees Forty Five Crore Seventy Seven Lakh Sixty Five Thousand Only). The Company is *inter alia* carrying on breweries and distilleries business.
   iii. It is stated that the Respondent is a manufacturer of breweries and distilleries and approached the Bank for part funding the green field brewery project established at Gummidipoondi, Tiruvallur District with e capacity of 5 Lakh KL P.A. at a total cost of Rs.116.60 crores. Pursuant to the requisition for Term Loan facility, it had sanctioned the same to the tune of Rs.75 crores on 27.08.2010 subject to the following terms and conditions;
      - **Security:**

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- 1st exclusive charge on the entire immovable and movable project assets including mortgage/charge on land and building (wherein proposed facilities were coming up), plant and machinery.
- 1st exclusive charge on the LC/escrow account, trust and retention account, DSRA and other reserves and any other bank accounts of the project including without limitation, the project revenue account.
- 1st exclusive charge/assignment/security interest on the company's rights under the project documents including contracts and all licenses, permits, approvals, consents and insurance policies in respect of the project.

- **Guarantee –** Personal Guarantee of the Directors of Corporate Debtor viz.,
    1. Shri M.P. Purushothaman
    2. Ms. Sheena Adarsh
    3. Ms. Nisha Purushothaman

iv. It is also stated that the Respondent is running a distillery business after getting necessary approval/license format the Government and without the same, it cannot run the factory. The Respondent had offered primary security of 1st exclusive charge/assignment/security interest on the company's rights under the project documents including contracts and all licenses, permits, approvals, consents and insurance policies in respect of the project. The Petitioner has got prerogative rights to transfer the licence in favour of intending purchaser(s) in order to run the factory.

v. The Respondent had passed a board resolution on 27.08.2010 whereby empowered its Directors, Ms. Nisha Purushothaman and Mrs. Sheena Adarsh jointly or severally to execute the loan security documents and create EM over the schedule mentioned property in favour of the Bank to secure the repayment as aforesaid loan amount.

vi. It is stated that in consideration of the grant of aforesaid credit facilities, the Respondent had executed various loan security documents on 27.08.2010 in

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favour of the Bank. The Respondent as owner of the schedule mentioned property had executed the Memorandum of Deposit of Title Deeds on 29.10.2010, registered as Doc.No.4358/2010, SRO Gumidipoondi whereby mortgaged the schedule mentioned property to cover the loan liability of Term Loan and ILC/FLC facilities. In order to tide over the business operations, the Respondent had sought for further financial assistance for its working capital and accordingly the Petitioner had sanctioned the Cash Credit facility to the tune of Rs.15 crores on 30.05.2012 subject to the terms and conditions as envisaged thereon. The Respondent has also passed a board resolution on 01.06.2012 whereby empowered its Directors. Mr. M.P. Purushothaman and Ms. Nisha Purushothaman jointly or severally to execute the loan security documents in favour of the Petitioner.

vii. It is further stated that in consideration of the grant of aforesaid Cash Credit facility, the Respondent had executed the various loan security documents on 07.06.2012 in favour of the Petitioner. The Respondent as owner of the schedule mentioned property had extended the EM by executing Supplemental MOD on 21.08.2012, registered as Doc.No.4490/2012, SRO, Gummidipoondi whereby mortgaged the schedule mentioned property to cover the loan liability of Cash Credit facility. The Respondent had again sought for restructuring of existing Term Loan and the same was sanctioned on 29.03.2014 subject to the terms and conditions as envisaged thereon. The Respondent had passed a board resolution on 29.03.2014 whereby empowered in Directors, Mr. M.P. Purushothaman and Ms. Nisha Purushothaman jointly or severally to execute the loan security documents in favour of the Petitioner.

viii. In consideration of the grant of aforesaid restructuring facility, the Respondent had executed the loan security documents on 29.03.2014. The Petitioner had lastly reviewed the credit facilities and renewed the same on 25.08.2018 subject to the terms and conditions as envisaged thereon. The Respondent had duly registered the charge before the ROC, Karnataka as evident from certificate of

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registration of charge dated 18.10.2010, 07.06.2012, 18.06.2012 whereby confirmed the Term Loan and Cash Credit facilities availed from the Petitioner. The Respondent was originally registered as M/s. Appollo Distilleries Pvt. Ltd. which was subsequently changed to M/s. Appollo Distilleries and Breweries Pvt. Ltd. as evident from fresh certificate of incorporation consequent upon change of name dated 16.10.2012. The directors of Respondent had executed guarantee agreement to secure the repayment of loan amount of the Respondent and their guarantee shall be continuing one in terms of Section 128 and 129 of Indian Contract Act. The Respondent had created and extended EM to secure the repayment of loan amount by executing MOD and supplemental MOD and the said EM is enforceable in terms of Section 58(f) of Transfer of Property Act.

ix. It is stated that despite restructuring/renewal of existing credit facilities yet the Respondent could not revamp the business operations and achieve the projected results at an optimum level for obvious reasons. The Respondent had executed the balance and security confirmation letters on 29.08.2011, 07.06.2012, 06.05.2013, 18.08.2014, 09.06.2015, 10.05.2016, 11.05.2017 and 22.05.2018 whereby acknowledged the outstanding loan amount due under the Term Loan and Cash Credit facilities for the purpose of Section 18 of Limitation Act.

x. It is also stated that the since the Respondent had failed to achieve the projected results at an optimum level and adding fuel to the fire, failed the service the principal and interest in terms of loan security documents, the loan accounts of the Respondent were classified as NPA on 30.09.2018 in the books of Petitioner. The Respondent had manufactured and delivered IMFL products from and out of Bank funds and the Petitioner has got charge over the book debts, receivables from any 3rd parties. The Respondent had delivered IMFL products to TASMAC who fails to pay the sale price amount to the Petitioner vide letter dated 26.11.2018 by citing that they will make the payment only after obtaining

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order from the Court. Hence, the Petitioner is constrained to file interim application along with the original application.

xi. It is stated that the Petitioner has caused a demand notice on 07.01.2020 to the Respondent but evoked no response. The Respondent along with its guarantors are due and liable to pay a sum of Rs.43,08,88,403.56/- towards the Term Loan facility, Rs.17,43,20,262.47/- towards the Cash Credit facility aggregating to the sum of Rs.60,52,08,666.03/- as on 31.07.2020 to the Petitioner.

xii. The following amounts are now due and outstanding from the Respondent to the Petitioner under the aforesaid facilities:

Amount payable by the Respondent

Name of the Credit Facility	Amount
Term Loan	Rs.75 crores
Balance outstanding amount prior to NPA, 30.09.2018	Rs.32,73,59,499.23
Interest calculated subsequent to NPA (from 30.09.2018 to 31.07.2020)	Rs.9,51,19,357.68
Penal Interest @ 2% without compounding	Rs.1,34,09,546.65
Amount realized after NPA	Rs.50,00,000.00
Total	**Rs.43,08,88,403.56**

Name of the Credit Facility	Amount
Cash Credit	Rs.15 crores
Balance outstanding amount prior to NPA, 30.09.2018	Rs.15,16,53,177.28
Interest and other charges calculated subsequent to NPA (from 30.09.2018 to 31.07.2020)	Rs.3,96,28,107.68
Penal Interest @ 2% without compounding	Rs.57,24,739.01
Other Charges (after NPA)	Rs.16,53,260.00
Debits to the account after NPA	Rs.59,059.00
Amount realized after NPA	Rs.2,43,98,080.50
Total	**Rs.17,43,20,262.47**

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Details of Equitable Mortgage of Immovable Property

1.	Name of the Mortgagor	Respondent
2.	Name of the Mortgagee	Punjab National Bank
3.	Description of the Property	As detailed in the Schedule
4.	Date of Creation of Mortgage	29.10.2010 and 21.08.2012
5.	Amount Advanced	Rs.75 crores for Term Loan facility Rs.15 crore for Cash Credit facility
6.	Amount Outstanding	Rs.43,08,88,403.56/- being the outstanding amount in the Term Loan payable by the Respondent Rs.17,43,20,262.47/- being the outstanding amount in the Cash Credit payable by the Respondent
7.	Rate of Interest	13.70% for Term Loan facility 13.40% for Cash Credit facility

xiii. The Respondent had agreed to pay the interest at 13.70% for Term Loan and 13.40% for Cash Credit as per the loan documents. The Petitioner has not debited the interest rests from the date of accounts becoming NPA in view of the directions of the RBI, regarding income recognition and assets classifications of loan accounts, under which if any account is running irregular for more than 90 days, it has to be classified as Non-Performing asset. This however does not relieve the Respondent from their liability to pay the principal and interest amount. As per the said stipulations, the present rate of interest payable on the Term Loan is 13.70% and Cash Credit is 13.40% with monthly rests together with penal interest of 2% since they have defaulted in making the loan amount in time.

xiv. It is stated that the Petitioner is maintaining true and correct account with respect to the loan accounts of the Respondent in the normal and ordinary usual course of business. The copies of the statement of accounts by way of

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computer statement maintained by the Petitioner in the normal and ordinary usual course of business and certified under Bankers Book Evidence Act are produced herewith for ready reference. Detailed statement on unapplied but accrued interest in respect of loan accounts are also produced for ready reference. The Petitioner declares that compound interest has been charged at such rate, and capitalized at such periodical rests, as are permitted by and do not run counter to, the directives of the RBI, and no penal interest has been compounded in the accounts. The loan transaction of the Respondent is of commercial nature and interest is levied as per RBI guidelines under Section 21A of Banking Regulation Act, 1949.

xv. It is further stated that the Petitioner intentionally failed to repay the dues and regularize the loan account. The Petitioner, therefore, issued notice under Section 13(2) of the SARFAESI Act on 24.10.2018 for which the Respondent had raised objection vide their letter dated 22.12.2018. The Petitioner has replied on 04.01.2019 to the objections raised by the Respondent. The Petitioner filed Original Application before the Debt Recovery Tribunal, Chennai on 11.02.2019 which is still pending before the Debt Recovery Tribunal, Chennai. Hence, the present Petition is filed by the Petitioner before this Adjudicating Authority is within time. Notice for initiating under IBC, 2016 was issued on 07.01.2020 which was served on 22.01.2020, the Respondent issued an untenable reply, but failed to comply the demand made in the notice. The Petitioner further declares that the petition is within the limitation in view of acknowledge of debt given by the Respondent from time to time. The Schedule 'A' Property and Schedule 'B' Property has been annexed as Annexure –XVII of the Petition.

3. The Respondent/Corporate Debtor has filed statement of objections dated 01.04.2021, by inter alia contending as follows:

i. It is submitted by the Corporate Debtor that no financial debt has been established by the petition as per the provisions of the code and it is abundantly clear that the Financial Creditor has hastily and prematurely approached this

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Adjudicating Authority with an intent to utilize the provisions of the Code merely as a penal measure, method of harassment and tool of recovery and not to serve the legislative intent of the Code.

ii. The Petition also suffers from 'Suppressioveri Suggestiofalsi' in so far as facts and circumstances that are vital to the adjudication of the Petition have been intentionally suppressed by the Financial Creditor in an attempt to maintain the Petition, which otherwise would render it liable to be dismissed *in limini*.

iii. In its 780 page of the Petition, the Petitioner Bank has conveniently omitted to reveal the various proceedings and the complexities surrounding such proceedings that are pending before the DRT Chennai, the Chennai Bench of the Adjudicating Authority and the Hon'ble Madras High Court, all before whom the Financial Creditor is being actively represented.

iv. The Corporate Debtor Company is a 25 year old Company in primarily beer manufacturing. The Corporate Debtor has earned immense goodwill and are one of the leading breweries in their field. They had never faced difficulties in selling their products and had been selling its products through TASMAC, a Tamil Nadu Government undertaking that is solely responsible for the retail and wholesale of all IMFL/Beer products in the State. The Corporate Debtor submits that it had been repaying the dues which were pending to the Financial Creditor Bank on a regular basis. In the year 2018, the Corporate Debtor Company had faced a severe loss and even during the said time, the Corporate Debtor was prompt in payment to the Financial Creditor Bank.

v. The Corporate Debtor was subsidiary of the Company, M/s. Empee Distilleries Limited 'Empee'). Since the holding company, Empee was facing financial crisis, its shareholding was sold for consideration to one M/s. Goodyield Investments Pvt. Ltd. ('Goodyield') vide share purchase agreement dated 25.10.2018 and the said Goodyield is the current majority shareholder of the Corporate Debtor. Pursuant to the said takeover, the Corporate Debtor's business activities were being regularized. However, due to the pandemic and

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lockdown, the liquor industry had come to a grinding halt and the Corporate Debtor had suffered irreparable loss on account of the same. Nevertheless, the Corporate Debtor is commercially solvent and in a position to service their liabilities and all coercive action on the part of the Bank in premature and uncalled for.

vi. While things stood thus, a notice under Section 13(2) of the SARFAESI Act, was issued by the Financial Creditor stating that the account had been classified as a NPA as on 30.09.2018 and a sum of Rs.47,87,15,801.51/- was due as on that day. The Corporate Debtor states that they had replied to the Financial Creditor vide letter dated 22.12.2018 and had raised objections to the 13(2) notice, however without considering the said objections, the Financial Creditor had issued another notice dated 10.01.2019 under Section 13(4) of the SARFAESI Act. Further that the Corporate Debtor had attempted to approach the Financial Creditor Bank for a One Time Settlement offer but the same was in vain as the Financial Creditor Bank was in a hurry to unscrupulously sell the properties which were kept as security with the Bank as the value of the secured properties are much more higher than the amount allegedly due to the Financial Creditor.

vii. Not stopping there, the Financial Creditor Bank had invoked the provisions of the RDDBFI Act and had filed an Original Application in O.A.No.244 of 2019 on the file of the DRT-II, Chennai seeking for direction for a payment of the Rs.33,97,98,656.55/-, among other relief. Apart from the said Original Application, the following other interlocutory Applications were filed by the Financial Creditor Bank before DRT-II, Chennai:

a. IA/212/2019 – For declaration of assets;
b. IA/211/2019 – For surrender of passport;
c. IA/210/2019 – Injunction from alienating or mortgaging or dealing with schedule properties;
d. IA/209/2019 – Garnishee application;

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e. IA/208/2019 – For appointment of advocate commissioner.

viii. Vide order dated 06.03.2019, the Ld. DRT-II, Chennai had grated injunction in IA/210/2019. Further, a status quo order was passed in IA/209/2019 whereby TASMAC, the only customer of the Corporate Debtor Company, was restricted from making payments to the Corporate Debtor.

ix. The above status quo order dated 06.03.2019 obtained by the Financial Creditor Bank, had severely prejudiced the operations and business of the Corporate Debtor Company since the transaction with TASMAC was the only avenue of income for the Corporate Debtor. Further, since even the employees' salaries could not be paid, the Corporate Debtor was constrained to approach the Hon'ble Madras High Court in C.R.P. No.1784 of 2019 and the Hon'ble Madras High Court had directed DRT to advance the hearing of IA/209/2019 and take it up priority. Accordingly, DRT had disposed IA/209/2019 on 28.05.2019, with a direction that 50% of amount that was being paid to the Respondent by TASMAC, would be paid to the Petitioner Bank and the balance 50% would be released to the Respondent, till disposal of the main OA.

x. The Petitioner Bank had not appealed against the said order and has been since enjoying the benefits of the order dated 28.05.2019. However, owing to the complexity of the legal issues initiated by the Petitioner Bank, TASMAC had eventually stopped issuing indents to the Respondent and the production and supply of the Respondent had come to a grinding halt. Simultaneously, Empee, the former parent company to the Respondent, had been subject to CIRP before the Chennai Bench of the Adjudicating Authority vide order dated 01.11.2018 in C.P/280/IB/2018. The RP of Empee had filed an avoidance Application in MA/731/2019 in CP/280/IB/2018 seeking to nullify the transfer of the majority shares of the Respondent in favour of Goodyield, as a preferential transaction.

xi. The Respondent had not caused appearance in the matter as no relief was sought for against it. However, the Respondent was shocked to receive

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knowledge of an order passed by the NCLT Chennai dated 12.01.2021 in IA/04/2021 in MA/731/IB/2019 in CP/280/IB/2018, wherein status quo was ordered to be maintained by the Respondent and other parties from creating fresh encumbrance on the Respondents' assets, however, the same was not made applicable to the Petitioner Bank and they were permitted to take action in accordance with law.

xii. On further enquiry it was learnt that one, SNJ Distillers Pvt. Ltd. ('SNJ') had proposed a Resolution Plan for Empee that was approved by the NCLT Chennai and that the said SNJ was attempting to claim rights over the shares of the Respondent, even though the transfer of the said shares had taken place prior to initiation of CIRP against Empee. The Respondent had immediately approached the Hon'ble High Court of Madras in W.P. No.3659 of 2021 seeking to quash all proceedings pending in the avoidance Application MA/731/2019 since the same were without jurisdiction. The Hon'ble High Court vide order dated 18.02.2021 had passed an ad interim direction forbearing NCLT from proceedings further in IA/04/2021 in MA/731/2019 in CP/280/2018, among other interim orders, and the matter stands posted to 15.04.2021.

xiii. It is also submitted that the Petitioner was very much a party to the proceedings in IA/04/2021 as well as in W.P.No.3659 of 2021. Without any regard for the disputes pending in relation to the ownership of 87% shares in the Respondent Company, the Petitioner Bank had unscrupulously issued an E-auction notice dated 08.01.2021 fixing the auction on 29.01.2021. Simultaneously, the present Petition is also being maliciously prosecuted by the Petitioner. The Petitioner Bank has also suppressed the fact that SNJ, claiming rights over this Respondent, had deposited a sum of Rs.10 crores with the Petitioner on 29.01.2021 to satisfy a condition imposed by DRT, Chennai to stay the sale that was proposed to be held on 29.01.2021. Notwithstanding the fact that SNJ does not possess any right or title over this Respondent, the

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Petitioner was permitted to withdraw and transfer the sum of Rs.10 Crores to an FD and the same has been suppressed in the present proceedings.

xiv. The Petitioner Bank and its rights have been protected by the various courts at every step of the way. The DRT-II Chennai, on an Application by the Petitioner Bank, had directed the only customer of the Respondent to pay 50% of all amounts payable to the Respondent, directly to the Petitioner Bank. The said order would tantamount to a quasi-resolution process that was initiated by DRT. The Petitioner has received substantial moneys towards discharge of Respondent's liability very recently and has suppressed the same. Hence, the conduct of the Petitioner in pursuing the present Petition, established beyond doubt that the present proceedings are nothing but a recovery mechanism for the Petitioner Bank and a means to punish the Respondent.

4. The Petitioner/Financial Creditor has filed Rejoinder and Written Submission dated 22.04.2021 & 20.01.2022, by inter alia stating as follows:

i. The contention of the Respondent that no financial debt has been established by the Petitioner as required under the provisions of law and same is pre-matured is false and frivolous statement. On the other hand, the Petitioner has submitted all the supportive documents along with statement of accounts of the transactions at the time of filing the main Petition itself and the copies of the same are served by mail as well hardcopy to the Respondent.

ii. The Petitioner submitted that they had initiated action by issuing notice under Section 13(2) of SARFAESI Act on 24.10.2018 against which party had given representation on 22.12.2018. The Petitioner had given a detailed reply to the said representation on 04.01.2019. Thereafter, symbolic possession under Section 13(4) of the SARFAESI Act 2002 was taken on 10.01.2019. The Petitioner also denies that the Respondent had approached the Petitioner with any OTS offer. As such the Petitioner had to proceed with further steps under SARFAESI Act for sale of the mortgaged properties towards the recovery of its dues. The Petitioner further submits that recovery measures under SARFAESI

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Act and RDDBFI Act are two parallel measures and can be proceeded with simultaneously for recovery of its dues. Pursuant to the order of DRT, the revenue from TASMAC was shared between the Petitioner and the Respondent. The Respondent could not maintain its business in the profitable manner and as such lost TASMAC from its clientele. This cannot be attributed as a fault of the Petitioner. The Respondent is trying to shift the responsibility of their non-performance to the Petitioner. The Petitioner has been served with notice in W.P. No.3659/2021 only on 09.04.2021. As such, the statement of the Respondent that the Petitioner has disregarded matter pending before various court of law is false.

iii. It is also submitted that DRT 2 Chennai has allowed the conditional stay of no further SARFAESI action on the properties of the Respondent in S.A. No.28 of 2021 (filed by one M/s. SNJ Distilleries) on payment of Rs.10 crores and the said amount has been kept separately in interest bearing FD in terms order of DRT. The Petitioner cannot directly appropriate the said amount into the loan account and any such alluding by the Respondent is false. The Respondent is trying to misrepresent before the Adjudicating Authority for reasons best known to them. The Petitioner had lend an amount of Rs.75 crores (term loan) and Rs.15 crores (cash credit) to the Respondent during its course of business. However, the Respondent had failed to repay its dues as per agreed terms & conditions. Hence, the Petitioner was constrained to initiate the various recovery actions for recovery of public money. After the account became NPA with great difficulty, the Petitioner could recover a meager amount of Rs.2.95 crores only against the total overdue of Rs.63.46 crores as on 31.07.2020 in terms of DRT order. As such, there is no question of suppression of fact by the Petitioner, in turn, the Respondent is trying to confuse the Adjudicating Authority with their carefully twisted facts.

iv. The Petitioner submits that there is no proof of sufficient means with the borrower company as its parent company M/s. Empee Distilleries Ltd. had

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already under gone CIRP and presently is under new management. Further, in spite of repeated letters and promises, the Respondent had failed to pay any amount towards the Petitioner dues. Also, the unit is closed and it is not functioning for last 2 years and the last balance sheet as per MCA website is as on 31.03.2019. The Respondent had submitted multiple OTS offers, but till date, they have not deposited any upfront amount as per the OTS guidelines of the Petitioner to show their bonafideness.

v. Mr. M. Sreenivasa Rao constituted attorney of Punjab National Bank, Large Corporate Bank Office, Chennai. He is duly authorized to represent the Financial Creditor as per the Power of Attorney granted by the Board vide Board Resolution No.92 dated 22.03.2010 and common seal affixed on the said GPA pursuant to the said resolution by the Director of the Bank. The said authorization is subsisting and binding. Therefore, presenting of the Petition by Mr. M. Sreeinvasa Rao is valid and copy of the power of attorney also produced along with main Petition.

5. The Respondent/Corporate Debtor has filed Written Submission dated 20.01.2022.

6. Heard Mr. K.V. Shyam Prasad, learned Counsel for the Petitioner/Financial Creditor and Mr. Rohan Rajasekaran, learned Counsel for the Respondent/Corporate Debtor. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Rules made thereunder.

7. It is relevant to refer the judgment of Hon'ble Supreme Court in *"Innoventive Industries Ltd. Vs. ICICI Bank and Anr.* – (2018) 1 SCC 407", relevant portion of which is extracted below: -

> *"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines*

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"claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

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8. Since the present Petition has been filed under Section 7 of the IBC by the Financial Creditor, it is sufficient for this Adjudicating Authority, if it is satisfied that the C.P. is complete and that the Petitioner proves the existence of the financial debt and its liability to pay by the Respondent/Corporate Debtor.
9. Firstly, the contentions of the Respondent/Corporate Debtor with regard to the non-availability of the Memo of Parties, non-mentioning of the date of default and not having valid authorization by the Power of Attorney Holder who filed the C.P. are unsustainable as Part I and II of Form 1 clearly described the parties to the C.P., and the Petitioner has mentioned the date of default as 31.07.2020 in Part IV of Form 1 and that the Power of Attorney holder has duly authorized by the Board of the Petitioner Bank, vide Resolution No.92 dated 22.03.2010, and hence rejected.
10. The various documents mentioned in Part V of Form 1 of the C.P. and enclosed to the C.P. clearly established the existence of the financial debt and the liability of the Respondent/Corporate Debtor to pay the same to the Petitioner. The Respondent/Corporate Debtor failed to dispute the same with any valid document.
11. The various contentions raised by the Respondent/Corporate Debtor with regard to litigation pertaining to its (erstwhile) Holding Company i.e. M/s. Empee Distilleries Ltd. has no relevance to the present case. The Respondent/Corporate Debtor failed to show any legal impediment in proceeding with the instant C.P. The contention of the Respondent/Corporate Debtor that the C.P. is filed by the Petitioner not for resolution of the Corporate Debtor but for the recovery of its money, has also no substance, in the facts of the case.
12. In the given facts and circumstances, the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/-, the petition is admitted in terms of Section 7 of the IBC, 2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section

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14, the following prohibitions are imposed, which must be followed by all and sundry:

(a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in

(b) any court of law, tribunal, arbitration panel or other authority;

(c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

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

(e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

(f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;

(g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

(h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

13. In Part III of Form No.1, Mr. R. Venkatakrishnan, Registration No. IBBI/IPA-001/IP-P00115/2017-2018/10250 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form No.2 dated

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17.10.2020 has been filed along with the C.P at Page Nos.26-27. However, since certificate of registration is not filed, the IRP shall file the same within one week from the receipt of this order.

14. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. R. Venkatakrishnan and there is nothing adverse against him. In view of the above, we appoint Mr. Mr. R. Venkatakrishnan, bearing Registration No. IBBI/IPA-001/IP-P00115/2017-2018/10250, registered address at 'Rajparis Trimeni Towers', First Floor, No.147, G N Chetty Road, T Nagar, Chennai – 600 017, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

15. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

16. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

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