

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

IA(IBC)/915(CHE)/2021 in CP/280/IB/2018

*(filed under section 60(5) of The Insolvency And Bankruptcy Code, 2016
Read With Rule 11 of The National Company Law Tribunal Rules, 2016)*

In the matter of M/s. Empee Distilleries Limited

1. M/s. SNJ Distillers Private Limited
Represented by its Authorised Signatory
Mr. R. Anbalagan
99, Canal Bank Road, CIT Nagar
Nandanam, Chennai – 600 035

..... Applicant/Successful Resolution Applicant

2. M/s. Empee Distilleries Limited
Represented by its Authorised Signatory
Mr. R. Anbalagan
99, Canal Bank Road, CIT Nagar
Nandanam, Chennai – 600 035

..... Applicant/Corporate Debtor

-Vs-

1. S. Rajendran
In the matter of M/s. Empee Distilleries Limited
No. 188/87, 2nd Floor, Evalappan Mansion
Habibullah Road (Near Kodambakkam Rly Stn)
T. Nagar, Chennai – 600 017
2. Sub Registrar
Gummidipoondi Taluk
C4G7+QRC, Kayalarmedu, Gummidipoondi
Tamil Nadu – 601 201
3. Sub Registrar
Aranthangi
SH 29, Aranthangi
Tamil Nadu 614 616
4. Sub Registrar, Avadi
Kulakkarai St, Vivekananda nagar
TNHS MIG Block, Avadi
Tamil Nadu – 600 071

5. Sub Registrar, Sripurumpudur
SH 57, Ramanujar Nagar, Sriperumpudur
Tamil Nadu 602 105
6. Sub Registrar, Shivaji Nagar, Bangalore
3rd floor, Monarch chambers, No.122/2
Infantry Road, Shivaji Nagar, Bengaluru
Karnataka - 560 001
7. Sub Registrar, Jogipet
R3Q9+3R2, Jogipet,
Telangana 502 270
8. Sub Registrar, Palakkad
Kenathyparambu, Kunathumedu
Palakad, Kerala 678 013

..... Respondents

CORAM

Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : *Avinash Krishnan Ravi, Advocate*
For Respondent : *N.P. Vijay Kumar, Advocate for R1*

Order pronounced on 10th June 2022

ORDER

Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)

The application under consideration is filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code', 2016) read with Rule 11 of the National Company Law Tribunal Rules, 2016 by the M/s. SNJ Distillers Private Limited, the successful Resolution Applicant in the matter of M/s. Empee Distilleries Limited, (hereinafter referred to as 'Corporate Debtor') seeking following reliefs:



- a) Declare that the documents morefully contained in Schedule 1 to 7 as lost and consequently;
- b) Direct the 2nd Respondent to register this order and issued certified copies of documents mentioned in Schedule 1 to this Application, which may be treated like original documents for all future purposes;
- c) Direct the 3rd Respondent to register this order and issued certified copies of documents mentioned in Schedule 2 to this Application, which may be treated like original documents for all future purposes;
- d) Direct the 4th Respondent to register this order and issued certified copies of documents mentioned in Schedule 3 to this Application, which may be treated like original documents for all future purposes;
- e) Direct the 5th Respondent to register this order and issued certified copies of documents mentioned in Schedule 4 to this Application, which may be treated like original documents for all future purposes;
- f) Direct the 6th Respondent to register this order and issued certified copies of documents mentioned in Schedule 5 to this Application, which may be treated like original documents for all future purposes;
- g) Direct the 7th Respondent to register this order and issued certified copies of documents mentioned in Schedule 6 to this Application, which may be treated like original documents for all future purposes;
- h) Direct the 8th Respondent to register this order and issued certified copies of documents mentioned in Schedule 7 to this Application, which may be treated like original documents for all future purposes;

2. The brief facts of the case are that upon filing of a petition under section 7 of the Code, 2016, by Union Bank of India against

M/s. Empee Distilleries Limited, the Corporate Debtor was put under CIRP vide order dated 01.11.2018 of this Tribunal passed in CP/280/IB/2018 and an Interim Resolution Professional was also appointed to manage the affairs of the Corporate Debtor. The 1st Respondent herein was appointed as Resolution Professional of the Corporate Debtor by the Committee of Creditors (COC) in its meeting held on 27.11.2018 which was duly approved by this Tribunal vide its order dated 13.12.2018 passed in MA/654/IB/2018.

3. The 1st Applicant submitted its Resolution Plan which was placed before the 8th meeting of CoC held on 17th and 18th July 2019 and the Resolution Plan amount was Rs. 475.04 crore. The CoC unanimously approved the Resolution Plan submitted by the 2nd Respondent herein and same was submitted before this Tribunal vide application No. MA/780/IB/2019. This Tribunal considered the said Resolution Plan of the 2nd Respondent and approved the same vide its order dated 20.01.2020. In accordance with the approved Resolution Plan, the 1st Applicant herein has paid the entire sum of Rs. 475.04 crore and as such revived the Corporate Debtor.

4. It was submitted that the 1st Applicant after taking over the affairs of the 2nd Applicant as a going concern, is entitled to receive all documents, including the property documents in original which belongs to the 2nd Applicant. It was submitted that it is the

obligation of the 1st Respondent to handover all the documents including the property documents of the 2nd Applicant as envisaged under section 25 of the code, 2016, however, the 1st Respondent was unable to hand over the same due to the non-cooperation of the erstwhile promoters/directors despite filing application and directions issued by the Hon'ble Adjudicating Authority.

5. The Learned Counsel for the Applicants while reiterating the above averments would submit that though the 1st Applicant is entitled to be handed over all the documents including the property documents, the 1st Respondent was unable to handover the same due to the non-cooperation of the erstwhile promoter/directors. Even after lapse of 16 months, the 1st Applicant could not get the documents. He has also submitted that the 1st Applicant has availed loan from State Bank of India mortgaging the assets of the 2nd Applicant and it is mandatory on the part of the Applicants to submit the documents to the bankers. Since, the Applicants are not in a position to hand over the documents to the banker, they are forced to pay penal interest of 1% p a to the bankers which causes grave loss and prejudice to the Applicants.

6. The Learned Counsel for the Applicants also bring to the notice of this Tribunal the relevant clauses 3.1: 'Terms of the Resolution Plan' and Clause 7; 'Post Approval Actions' contained in the

Resolution Plan and submitted that in the interest of justice and in the interest of completing the implementation of the resolution plan, the documents i.e. title deeds morefully mentioned in the schedule are permitted to be reconstructed. In view of his above submissions, he prayed that the application be allowed and necessary directions are to be issued to the 2nd to 8th Respondents.

7. We have heard the submissions made on behalf of the Applicants and also perused the pleadings.

8. It is a fact borne on record that the 1st Respondent has filed an Application under section 19(5) of the Code and this Tribunal has also issued directions to the Respondents therein to comply with its order. It is also on record that the 1st Respondent could get only a limited information from the erstwhile promoter/Directors. In the present case it could not happen due to the non-cooperation of the erstwhile promoter/directors despite of orders issued by this Tribunal. In the absence of the original title deeds, there is not other option except reconstruct the documents including the property documents.

9. Thus, by taking into consideration the facts and circumstances of the present case, we are inclined to allow the present application and accordingly, we direct the 2nd to 8th Respondents to issue

certified copies of the documents mentioned in the respective Schedules attached with the Application filed by the Applicants immediately once the application for the same is filed with them. The said documents would be treated as 'Original' documents for all future purposes and once the 1st Respondent get all the documents from the 2nd to 8th Respondents, he will hand over the same to the 1st Applicant. The 1st Respondent is also directed to file necessary application to the 2nd to 8th Respondents immediately by attaching the relevant Schedule of the respective respondent. The 1st Applicant will bear the cost of getting the certified copies of the documents from the 2nd to 8th Respondents.

10. With the above directions this application stands **closed**.

- Sd -

ANIL KUMAR B
MEMBER (TECHNICAL)

- Sd -

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Raymond