

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

**IA/525/IB/2020 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***

S. Rajendran, Resolution Professional &  
Head – Monitoring Committee  
In the matter of M/s. Empee Distilleries Limited  
No. 71/1, McNichols Road  
Hari Krupa, 2<sup>nd</sup> Floor, Chetpet  
Chennai 600 031

..... Applicant

Vs

1. Shaji Purushothaman  
Empee Towers, No. 50, Harris Road  
Pudupet, Chennai 600 002
2. M. P. Purushothaman  
Empee Towers, No. 50, Harris Road  
Pudupet, Chennai 600 002
3. Nisha Purushothaman  
Empee Towers, No. 50, Harris Road  
Pudupet, Chennai 600 002
4. Chandrasekaran  
Empee Towers, No. 50, Harris Road  
Pudupet, Chennai 600 002
5. M/s. SNJ Distillers Private Limited  
Old No. 47, New No. 90  
Canal Bank Road, CIT Nagar  
Nandanam, Chennai – 600 035

..... Respondents

CORAM

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



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

Order pronounced on **10<sup>th</sup> June 2022**

**ORDER**

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

The application under consideration is filed under section 70, 74 and 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code', 2016) read with Rule National Company Law Tribunal Rules, 2016 by the Resolution Professional and Head – Monitoring Committee of implementation of Resolution Plan of M/s. Empee Distilleries Limited (hereinafter called as Corporate Debtor) and sought for the following reliefs:

(a) To direct the Respondents 1 to 4 to immediately hand over all items, including but not limited to the items mentioned in Annexure XI belonging to the corporate debtor and in the alternate to permit the applicant to break open, enter and take possession of all items mentioned in the Annexure XI with the assistance / protection of the Police;

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, (hereinafter referred to as the 'Corporate Debtor'), 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 applicant 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. At present, the applicant is also the Head of Monitoring Committee overseeing the implementation of Resolution Plan approved by this Tribunal in the matter of the Corporate Debtor.

3. It was submitted that on taking over the charge as the Resolution Professional of the Corporate Debtor, the applicant in accordance with the requirement of section 25 of the Code, 2016 took steps to take control over the assets and management of the Corporate Debtor. It was submitted that Respondent Nos. 1 to 4 initially refused to meet the RP and their personnel had also not cooperated with the RP. Despite several communications, no information forth coming from the Respondent Nos. 1 – 4 and they were not cooperating during the CIRP process and constantly trying to scuttle the process and functioning of the Applicant. Therefore, an Application under section 19(5) of the Code had to be filed before this Tribunal for necessary directions to the former promoter/directors to cooperate with the Applicant. It was submitted that despite directions issued to the promoter/directors by this Tribunal, they have not cooperated with the RP. Therefore, it was submitted that another application in MA/65/IB/2019 was filed. Further, it was submitted that this Adjudicating Authority by

exercising its power under Section 429 of the Companies Act, 2013 requested the District Magistrate concerned to assist the applicant in the process.

4. The Learned Counsel for the Applicant submitted that though some information were extracted from them, they were not co-operating and causing lot inconveniences by filing application after application for stalling the process of resolution. In the meantime, the RP has found some of the transactions were preferential and therefore, the RP was required to access to the SAP system maintained by the Corporate Debtor. Further, initially the access to the SAP systems was refused and complaints were made to Cyber Crime Department. It was submitted that direct contact had also made to the SAP provider at Bangalore. The recovery steps were also taken but to no avail. Based on the available information and the applicant having formed an opinion as to the nature of a transaction being preferential, an application under 43 of the Code, 2016 was filed for avoidance of the said transaction in MA/731/IB/2019.

5. The 1<sup>st</sup> Respondent had submitted a settlement proposal to the CoC which was rejected by them in entirety and an application was filed in MA/1250/IB/2019 was filed by the 1<sup>st</sup> Respondent challenging the same which was dismissed by the Adjudicating

Authority. It was submitted that vital documents and information of the Corporate Debtor were withheld by them. In view of their non-cooperation several key information of the Corporate Debtor could not be accessed.

6. The 5<sup>th</sup> Respondent herein has submitted its Resolution Plan which was placed before the 8<sup>th</sup> meeting of CoC held on 17<sup>th</sup> and 18<sup>th</sup> July 2019 and the Resolution Plan amount was Rs. 475.04 crores. The CoC unanimously approved the Resolution Plan submitted by the 2<sup>nd</sup> Respondent herein and same was submitted before this Tribunal vide MA/780/IB/2019. This Tribunal considered the said Resolution Plan of the 2<sup>nd</sup> Respondent and approved the same vide its order dated 20.01.2020.

7. After the approval of the Resolution Plan of the 2<sup>nd</sup> Respondent herein, a monitoring committee was formed to monitor the implementation of the Resolution Plan and the same is in progress and nearly 60% of the resolution plan amount has been brought in by the 5<sup>th</sup> Respondent. The 1<sup>st</sup> Respondent had preferred a Writ Petition in WP No. 1926 of 2020 and initially the order of approving the Resolution Plan was stayed by the Hon'ble High Court vide order dated 30.01.2020. Subsequently the said writ petition was dismissed by order dated 19.03.2020 against which SLP was also filed before the Hon'ble Supreme Court which was also dismissed on

10.06.2020. The 1<sup>st</sup> Respondent had also filed an appeal before NCLAT

8. The Learned Counsel for the Applicant while reiterating the above averments would submit that the 1 to 4<sup>th</sup> Respondents are not co-operating and he had also brought to the notice to this Tribunal the provisions of section 70 of the Code, 2016 which deals with the punishment for misconduct in course of corporate insolvency resolution process and also section 74 which deals with punishment for contravention of moratorium or the resolution plan. He would further submits that the Monitoring Committee had approved reconstitution of the board directors of the Corporate Debtor in terms of the approved Resolution Plan with three nominees of the successful resolution applicant's choice and had authorized them to take possession of the units for the purpose of commencing the operation including the renewal of the licences etc.

9. The Learned Counsel for the Applicant also submits that the Applicant demanded the 1-4<sup>th</sup> Respondents to provide the keys of the office space at Midford House, Flat No. 205A, Midford Gardens, MG Road, Bangalore belonging to the Corporate Debtor along with relevant documents and title deeds. Even after sending several emails and reminders, the 1-4<sup>th</sup> Respondents have not handed over

the keys and other documents as sought for. Therefore this application and he prayed to allow the application.

10. The 1<sup>st</sup> Respondent filed his reply to the application in compliance with the order dated 05.03.2021 of this Tribunal . While reiterating the submissions made in the reply statement, the Learned Counsel for the 1<sup>st</sup> Respondent has submitted that the 1<sup>st</sup> respondent is having objections on the maintainability and on merits, however, filed this affidavit to the limited extent to bring certain facts on record.

11. The Learned Counsel for the 1<sup>st</sup> Respondent has submitted that neither the 1<sup>st</sup> nor the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are in possession of the keys of the property/flat Midford House, Flat No. 205A, Midford Gardens, MG Road, Bangalore. He also submitted that as far as to their knowledge concerned the keys are with one Mr. Ranganathan who is an employee of the Corporate Debtor and he is reports to the management of the Resolution Applicant. Therefore, he prayed to dismiss the application.

12. We have heard the submissions made on behalf of the parties and also perused the pleadings.





13. It is the contention of the Applicant that the keys of the property/flat at Midford House, Flat No. 205A, Midford Gardens, MG Road, Bangalore were not handed over by the 1 to 4<sup>th</sup> Respondents even after repeated requests/emails/reminders, whereas the contention of the 1<sup>st</sup> Respondent is that the said keys are with one Mr. Ranganathan, an employee of the Corporate Debtor who is reporting to the 5<sup>th</sup> Respondent. In view of the contradictory statements made by the parties, it would be better for all concerned if the break open of the flat is ordered. Accordingly, the Applicant is hereby directed to break open the property/flat at Midford House, Flat No. 205A, Midford Gardens, MG Road, Bangalore and to take over the property and all the items available there. If need be, the assistance of local police authorities may be taken and upon a request made by the Applicant in this regard, the local police authorities will also extend their cooperation. With the above directions the application stands **closed** and no order as to costs.

- Sd -

**ANIL KUMAR B**  
MEMBER (TECHNICAL)

- SD -

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

*Raymond*