

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

IA/IB/920/2020 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. Gopi,
Proprietor
Goutham Roadways,
New No.4, Old No.8,
Muthukrishnan Street,
Pondy Bazaar,
T. Nagar, Chennai – 600 017

..... Applicant

-Vs-

M/s. Empee Distilleries Limited
Corporate Debtor
Empee Tower
No.59, Harris Road,
Pudupet, Chennai – 600 002

Mr. S. Rajendran
Resolution Professional of
Empee Distilleries Limited
No. 188/87, 2nd Floor, Evalappan Mansion
Habibullah Road (Near Kodambakkam Rly Stn)
T. Nagar, Chennai – 600 017

SNJ Distilleries Private Limited
Reprented by its Director
Ms. Geetha Jayamurugan
No.99, Canal Bank Road,
CIT Nagar, Nandanam,
Chennai – 600 036

..... Respondents

CORAM

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

For Applicant : Tushita Reddy, Advocate
For Respondent : Avinash Krishnan Ravi, Advocate for R1
N.P. Vijaykumar, Advocate for R2

Order pronounced on **10th June 2022**

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

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 seeking following reliefs:

- a) Directing the Respondents to make payment of a sum of Rs.62,31,242/- (Rupees Sixty Two Lakhs Thirty One Thousand One Hundred Two hundred Forty Two only) towards the Applicant's claim from the contingency fund available;
- b) 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. The CIRP in respect of the Corporate Debtor was initiated by this Tribunal on 13.12.2018. In the present case, it is seen that Form – G was issued by the RP on 15.01.2019 and the Applicant submitted his claim before the 1st Respondent in Form – B on 10.06.2019 for a sum of Rs.62,31,242/-. It was submitted that various emails have been exchanged between the parties in respect of the claim being filed by the Applicant by the 1st Respondent. While this being the case, it

was submitted that the Resolution Plan in respect of the Corporate Debtor was approved by this Tribunal vide order dated 20.01.2020 and the 2nd Respondent was the successful Resolution Applicant.

3. It was submitted that the Applicant has moved MA/693/2020 to consider the claim of the Applicant and the same came to be allowed by this Tribunal vide its order dated 26.07.2019 and a direction was given to consider the claim of the Applicant.

4. The RP has filed counter and it was submitted that the RP vide email dated 29.07.2019 has requested the Applicant to submit supporting documents to submit the claim and has also listed out the documents. However, it was submitted that the Applicant has failed to furnish those documents and hence the RP vide email dated 17.08.2019 has stated that he is unable to admit the claim of the Applicant.

5. Heard, the submissions made by the Learned Counsel for both the parties. In the present case, it is seen that the Resolution Plan in respect of the Corporate Debtor was approved by this Tribunal on 20.01.2020. The present Application is filed before this Tribunal on 05.08.2020. Further, it is also seen a contingency fund to the tune of Rs.7 Crore was kept in the Resolution Plan for a period of 6 months from the date of approval of the Resolution Plan. The said 6 months

expired on 20.07.2020 and admittedly the present Application is filed before this Tribunal only on 05.08.2020.

6. In this context, it is significant to refer to the decision of the Hon'ble Supreme Court in the matter of **Ghanashyam Mishra and sons Private Limited -Vs- Edelweiss Asset Reconstruction Company Limited & Ors; 2021 SCC OnLine SC 313**, wherein it has been held as follows;

58. Bare reading of Section 31 of the I&B Code would also make it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is, revival of the Corporate Debtor and to make it a running concern.

60. Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal, that it requires RP to prepare an information memorandum containing various details of the Corporate Debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the Corporate Debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the Corporate Debtor towards them are required to be contained in the information memorandum.

61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived



and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.

86. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an on-going concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

95. In the result, we answer the questions framed by us as under:

- (i) That once a resolution plan is duly approved by the Adjudicating Authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and



other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.

7. Under the said circumstances, the relief as sought by the Applicant cannot be granted, in terms of the Judgment rendered by the Hon'ble Supreme Court in the matter of **Ghanashyam Mishra** (*supra*).

8. Accordingly, Application stands **dismissed**. No costs.

- SD -
ANIL KUMAR B
MEMBER (TECHNICAL)

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

Raymond