ANNEXURE I

NCLT ORDER

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

MA/1250/2019 *filed under section 60(5) of the IBC, 2016 &* **MA/780/2019 in CP/280/IB/2018** *filed under section 30(6) & 31 of the IBC, 2016.*

In the matter of Empee Distilleries Limited

MA/1250/2019:-
Shaji Purushothaman & 1 Anr

---Applicants

Vs

S. Rajendran, RP
(For Empee Distilleries Limited) & **6 Ors**

---Respondents

MA/780/2019:-
S. Rajendran, Resolution Professional
Representing Corporate Debtor
(Empee Distilleries Limited)

---Applicant

Order delivered on: 20.01.2020

Coram:

B. S.V. PRAKASH KUMAR, ACTING PRESIDENT
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Present:
MA/780/2019:-

For the Applicant	: *Shri. N.P Vijay Kumar, advocate* *Ms. M. Savitha Devi, Advocate* *Ms. R.V Yajura Devi, Advocate* *For Shri. S. Rajendran, RP*
For Resolution Applicant	: *Shri. P.H Arvindh Pandian, Sr. Advocate* *Shri. Avinash Krishnan Ravi, Advocate*
Counsel for the CD	: *Shri. T. K. Bhaskar, Advocate* *For Shri. SR Raghunathan, Advocate*

MA/1250/2019:-

Counsel for Applicant	: *Shri. T. K. Bhaskar, Advocate* *Shri. S.R Raghunathan, Advocate* *For Shri. D. Teack Raj, Advocate*
Counsel for R1 (RP)	: *Shri. N.P Vijay Kumar, advocate* *Ms. M. Savitha Devi, Advocate* *Ms. R.V Yajura Devi, Advocate*
Counsel for R2 (UBI)	: *Shri. Muthupariasamy, Advocate* *Ms. Geethapriya, Advocate*
Counsel for R3 (AB)	: *Shri. J. Harikrishna, Advocate*
Counsel for R7 (Edelweiss ARC):	*Shri. Rajmahesh, Advocate*

COMMON ORDER

Per: B. S.V. PRAKASH KUMAR, ACTING PRESIDENT

Order Pronounced on: 20.01.2020

It is an MA/780/2019 filed u/s 30 (6) of the Insolvency & Bankruptcy Code, 2016**(the Code)** by the Resolution Professional (RP) for this Bench approval of the Resolution Plan already approved by the Committee of Creditors on 22.07.2019 with requisite majority u/s 30 (4) of the Code.

2. This Company Petition filed u/s 7 of the Code was admitted on 01.11.2018 by appointing Mr. Venkata Shivakumar as Interim Resolution Professional. Pursuant to which on receipt of claims based on paper publication inviting claims, after creditors' claims being collated, CoC was constituted. Thereafter, when first meeting

was held on 27.11.2018, the CoC replaced the IRP with the present Applicant S. Rajendran as RP. Subsequent thereto, the RP, after compliance of the procedural aspect of the Code for example, determination of the liquidation value of the Corporate Debtor, preparation of Information Memorandum, on the same being considered by the CoC, the invitation for Expression of Interest was given on 15.01.2019.

3. On receipt of prospective Resolution Plans, two Resolution Applicants, namely, SNJ Distilleries Limited and Mandovi Distilleries and Breweries Private Limited were placed before the CoC in the meeting held on 12.04.2009, upon consideration, the CoC gave an opportunity to both the Applicants to improvise their respective plans by giving time upto 10.05.2019. When the CoC, in the fifth meeting held on 23.05.2019, noticed that none of them increased their Resolution Plan values, on there being no improvement in their plans, the CoC decided to issue fresh EOI giving chance to the existing Applicants to participate in the 2nd round.

4. As 180 days of CIRP was coming to end, this Bench, at request of the CoC u/s 12 of the Code, extended the CIRP period for another 90 days. Again on receipt of Resolution Plan application, the RP, after scrutiny of the same, placed before the CoC in the meeting held on 11.07.2019. In the said meeting, for the CoC having considered that SNJ Distilleries Private Limited and Kals Distilleries Limited Resolution Plans values were more than other plans, they were given final opportunity for providing and amending the Resolution Plans on the suggestions made by the CoC and for submission of improvised plan as 12.07.2019.

5. After improvising their plans, finally on 17.07.2019, the Resolution Applicants submitted their revised Resolution Plans to the CoC in sealed covers. Whereupon the CoC decided H1 Bid after scrutinising them based on the evaluation matrix agreed by the CoC. Finally, the CoC requested the RP to communicate to SNJ Distilleries Private Limited that it has been declared as H1 bidder. The CoC being satisfied in declaring SNJ Distilleries Private Limited as H1 bidder, the said Resolution Plan was put to vote through e-

voting on 20.07.2019 until 22.07.2019 8.00 P.M., wherein 100% of the CoC members voted in favour of the resolution plan submitted by SNJ Distilleries Limited.

6. This Plan Applicant sets out its plan for a sum of ₹475,04,32,494 providing payment to all the stakeholders including payment of ₹2.52 crores towards CIRP cost and to pay 100% of salaries for the employees and workmen during CIRP period, ESI and PF, put altogether coming to ₹ 6.50 Crores within 10 days from the date of approval of the Resolution Plan by the Adjudicating Authority. It has further set out to pay the secured Financial Creditors total admitted claim amount of ₹154,28,61,171 and unsecured Financial Creditors total admitted amount of ₹148,45,697. As to timing of payments, out of the admitted claims, 78% would be paid within 20 days and the balance of 22% within 60 days from the date of approving the Resolution Plan by this Adjudicating Authority.

7. For the operational creditors other than workmen and employees admitted claim amount is ₹39,80,24,737, against which, ₹ 29,83,35,053 being 75%, is provided in the Resolution Plan. Out of this amount, 78% would be paid within 20 days and the balance of 22% would be paid within 60 days from the date of approving the Resolution Plan by the Adjudicating Authority.

8. Operational Creditors – Statutory dues admitted claim amount is ₹126,77,35,373, for which, 100% provision is made in the Resolution Plan. This payment is split into two payments as ₹36,77,35,573 and ₹90,00,00,000. Out of ₹36,77,35,573, 78% would be paid within 20 days and remaining 22% would be paid within 60 days from the date of approving the Resolution Plan by the Adjudicating Authority. As far as ₹90,00,00,000 is concerned, the amount would be paid over 12 months from the date of approval of the Resolution Plan by the Adjudicating Authority. Provision for contingent liability is made for about ₹7,00,00,000.

9. On approval of this Plan by the Adjudicating Authority, a Monitoring Committee is proposed to be formed comprising Resolution Professional, two members representing the Resolution Applicant and two members of the Committee of Creditors being 1) Edelweiss Asset Reconstruction Company and 2) Andhra Bank which has been unanimously agreed to by members of the CoC and the Resolution Applicant. The Monitoring Committee will oversee the effective implementation of the Resolution Plan.

10. The above description is the summary of how the Resolution Professional makes payment to various stakeholders.

11. In the side lines, the erstwhile Director (namely Mr. Purushothaman) of the Corporate Debtor kept on filing one or other application before this Bench thereafter before Hon'ble NCLAT, then ultimately before Hon'ble Supreme Court of India.

12. In the 1st round, the shareholders raised litigation over timing of admission of the CP, wherein they failed before this Bench as well as Honourable NCLAT, when Second Appeal filed, the

Honourable Supreme Court dismissed the Appeal keeping the limitation point open in case of further proceedings.

13. In the 2nd round, Mr. Purushothaman filed MA/496, MA/497, MA/498 of 2019 for setting aside of the admission order dated 01.11.2018 on the ground Company Petition was hit by limitation but those applications were also dismissed on 27.05.2019 with an observation that NCLT has no power to review its own orders.

14. Over which, Mr. Purushothaman filed an appeal before Hon'ble Supreme Court of India wherein this MD having raised plea that he would settle the dues of the Secured Creditor (Union Bank of India), the Hon'ble Supreme Court of India disposed of the said appeal granting liberty to move an application to NCLT within two weeks i.e. 14.06.2019. Based on the order of Hon'ble Supreme Court of India, instead of filing an application within two weeks from 14.06.2019, Mr. Purushothaman on 02.08.2019, after 40 days from the date of Hon'ble Supreme Court order, filed an MA for implementation of the order of the Hon'ble Supreme Court of India.

For Purushothaman filed this MA after expiry of the time given by the Honourable Supreme Court, this Bench has dismissed that application on the ground that he filed it after 40 days stating that the CoC did not approve the plea of withdrawal raised by the MD and on the ground Section 12(A) application has not been filed before this Bench. When this MD filed an appeal against the order dated 02.08.2019 passed by this Bench in MA/718/2019, Hon'ble NCLAT disposed of the appeal with liberty to the MD to move an application under Section 12A for settling the claims of all the creditors including the claims of the guarantor. Subsequently when the erstwhile MD filed appeals before Hon'ble NCLAT on the order passed by NCLT in MA/735/2019, Hon'ble NCLAT dismissed the said appeal stating that there is no reasonable cause to condone the delay. In the meanwhile, when this MD again assailed the order dated 06.09.2019 before Hon'ble Supreme Court of India, it has passed status quo as on 04.10.2019 to be maintained. When this present application again came before this Bench on 10.10.2019, this Bench recorded that CoC has not received any settlement proposal from the promoter-directors in the CoC meeting held on 09.10.2019 stating so this application was posted for hearing on 07.11.2019. Again when the erstwhile MD approached Hon'ble Supreme Court of India, the Hon'ble Supreme Court of India on 18.10.2019 dismissed the appeal filed against the order dated 06.09.2019 passed by Hon'ble NCLAT giving liberty of two weeks to seek withdrawal from 18.10.2019.

15. But no application has come to the CoC within two weeks from the order dated 18.10.2019 passed by Hon'ble Supreme Court of India. The Applicant (RP) has further stated that the ex-promoters filed draft settlement plan with Union Bank of India (original Applicant who had filed the application u/s 7 of IBC) on 30.10.2019. Since that settlement plan of the ex-promoters is based on the order of Hon'ble NCLAT dated 06.09.2019, it has to be Section12 (A) application for withdrawal of the company petition on 90% approval of the CoC as envisaged u/s 129(A) of the Code r/w Regulation 30 (A) of CIRP Regulations. According to the mandate of the Code, the FC needs to file Form-FA by Union Bank

of India along with bank guarantee for meeting the expenses incurred for the purpose of CIRP till the date of filing Sec. 12(A) application to the RP,. Thereafter, RP shall place the said Form FA along with the BG before the CoC, then CoC shall consider such application within seven days then CoC shall approve with 90% value of the CoC, soon thereafter it has to be placed by RP along with an application before this Tribunal within three days of such approval.

16. Here in this case, the RP says no Form-FA has been filed, no guarantee has been given, no approval has been given by the CoC, and therefore settlement plan by the suspended directors will not amount to compliance of withdrawal as stated under Sec. 12 (A) of the Code.

17. However, with abundant caution, the CoC called for a meeting to consider this draft settlement plan of the suspended directors and in the meeting held on 04.11.2019, CoC considered the settlement plan and found the settlement is not better than the

Resolution Plan earlier approved by the CoC on the ground settlement plan is not acceptable to CoC and the promoters to be financially credible to approve the settlement plan therefore the CoC requested the RP to place their decision before the Adjudicating Authority (in short "AA") in the hearing on 07.11.2019.

18. In view thereof, the RP has sought for approval of the Resolution Plan given by SNJ Distilleries stating that (i) Total value of the Resolution Plan is ₹475.04Crores well above liquidation value; (ii) Amounts due to Financial Creditors is ₹302Crores which would be paid in full; (iii) Payments would be made in 4 stages, 35% in 20 days, 25% in 60 days, 20% in 90 days and 20% in 120 days; (iv) State VAT dues of ₹126.77Crores would be paid in 12 months' time, wherein ₹90Crores would be paid in 12 equated monthly instalments and ₹36.77Crores would be paid in 60 days, out of which 78% would be paid in 20 days and balance 22% in 60 days; (v) Workmen would be paid their dues; (vi) The operations of the company would remain as a going concern; (vii) There are

concessions sought for delisting of company as it would remain private limited company and for carrying forward of losses despite change in management under Section 79 read with Section 2(18) of the Income Tax Act and that MAT to be not made applicable similar to SICA rehabilitated company until net worth becomes positive. As to concessions, no concession is deemed as approved, if it is inconsistent to any other law.

19. For the CoC has approved the Resolution Plan with 100% voting by exercising its commercial wisdom and by this Resolution Plan 100% payment would come to the creditors and workmen, we are of the considered opinion that the CoC has approved the Resolution Plan in accordance with Section 30 and Regulations there to, in furtherance of it, for the Resolution Plan is in accordance with law as contemplated under Section 31 of the Code, we hereby approve the Resolution as recommended by the CoC.

20. As to the MA/1250/2019 filed by the Promoter Directors seeking direction against the financial creditors and a direction

against Union Bank of India to submit Form FA to the RP and CoC, for the reasons stated above concluding the Promoter Director failed to comply with the directions of Honourable NCLAT and Honourable Suprem Court of India, Therefore, this MA/1250/2019 filed by the promoter director is hereby **dismissed as misconceived.**

-SD-	-SD-
[S. VIJAYARAGHAVAN]	**[B.S.V PRAKASH KUMAR]**
MEMBER (Technical)	**ACTING PRESIDENT**

TJS/SR