

Date: 07.04.2025

To,
The Listing Department,
National Stock Exchange of India Limited,
5th floor, Exchange Plaza, Bandra-Kurla Complex
Bandra (East), Mumbai - 400051
Security ID: MANPASAND
ISIN: INE122R01018

Sub: Intimation regarding pending compliances as on date.

Respected Sir/ Madam,

With regards to the discussion the Delisting committee had with the promoter Mr. Abhishek Singh and the requirement of the committee to submit the pending list of compliances and status of CIRP proceedings in Company Appeal (AT) (Insolvency) No. 1863 of 2024, we hereby state the following :

1. The company has completed compliances as per the list shared by NSE, except for the compliances relating to audit and matters related therewith such as filing of quarterly reports, annual reports and secretarial audit report on account of the ongoing audit.
2. The audit of the company is in process and the auditor shall endeavour to complete the same before 25th April, 2025. Once the audit is done and we get signed balance sheet and reports from our auditor, the company shall follow the statutory period to calling the committee meetings, board meeting and general meeting and adopt the accounts.
3. The Hon'ble NCLT Ahmedabad Bench had admitted a petition under S. 9 of the Insolvency and Bankruptcy Code, 2016. The said order was challenged before the Hon'ble NCLAT by the promoter Mr. Abhishek Singh and the said order was suspended by the Hon'ble NCLAT. The appeal is presently pending adjudication before Hon'ble NCLAT and the next date of hearing is 5th May 2025. Copies of the orders passed by the Hon'ble NCLT and Hon'ble NCLAT in this regard are annexed herewith.

Kindly take the same on record.

Thanking you.

Yours Sincerely,

For, MANPASAND BEVERAGES LIMITED

ABHISHEK
DHIRENDRA
SINGH

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SINGH
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ABHISHEK DHIRENDRA SINGH

WHOLE TIME DIRECTOR

DIN: 01326637

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.302

RCP(IB)/5(AHM)2024(Old Case C.P. (IB)/129/AHM/2023 Restore on (03/07/2024)

Orders under Section 7 IBC

IN THE MATTER OF:

Yoginkumar Ashokbhai Patel

.....Applicant

Vs.

Manpasand Beverages Limited

.....Respondent

Order delivered on: 24/09/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I, AHMEDABAD**

**RCP(IB)/5(AHM)2024
(Old Case CP (IB) No. 129 of 2023)**

(Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

Yoginkumar Ashokbhai Patel

B/4, Laxmi Colony,
Nr. Urmi Char Rasta Productivity Road,
Vadodara,
Gujarat-390007.

...APPLICANTS/FINANCIAL CREDITOR

VERSUS

Manpasand Beverages Limited.

U24230GJ2011PTC064445
Having its address at:
1768 & 1774 Patki -1,
Village Manjusar, Ta. Salvi,
Vadodara, Gujarat – 391775.

...RESPONDENT/CORPORATE DEBTOR

Order Pronounced On: 24.09.2024

C O R A M:

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

A P P E A R A N C E:

For the Applicant : Mr. Abhishek Devgan, Advocate
For the Respondent : None – ex-parte

O R D E R
(PER: BENCH)

1. This is an application filed by Applicant seeking commencement of the Corporate Insolvency Resolution Process (“CIRP”) in the matter of Manpasand Beverages Limited (Corporate Debtor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against the Respondent/Corporate Debtor for having defaulted payment of its outstanding dues.
2. Perusal of Part-I of the Form-1, it is seen that the Applicant is one Yoginkumar Ashokbhai Patel having address at: B/4, Laxmi Colony, Nr. Urmi Char Rasta Productivity Road, Vadodara, Gujarat – 390007 having PAN No. AFTPP0410P.
3. Perusal of Part-II of the application reveals that the Corporate Debtor is Manpasand Beverages Limited. The

Corporate Debtor was incorporated on 17.12.2010 with CIN: L15549GJ2010PLC063283. The registered office of the Corporate Debtor is situated at 1768 & 1774 Patki – 1, Village Manjusar Tal. Savli, Vadodara – 391775.

4. Perusal of Part-III of the application reveals that Financial Creditors have named IP. **Manohar Lal Vij**, having Registration No. IBBI/IPA-001/IP-P-01480/2018-2019/12269 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). On perusal of IBBI Website reveals that the AFA is valid till 30.10.2024.
5. Perusal of Part-IV of the application reveals that the applicant is claiming a sum of Rs. 5,08,94,520/- which includes principle amount of Rs. 2,65,00,000/- and balance amount towards the interest calculated at the rate 24% p.a.
6. The date of default is mentioned as 27.04.2023.
7. Perusal of the Part-V of the application reveals that applicant is not holding any security.
8. The Financial Creditor is relying on the following documents:-

1. *True copy of the annual report of Manpasand Beverages Limited (Corporate Debtor) for the year 2019- 2020 as uploaded on National Stock Exchange website as ANNEXURE A -5.*
2. *True copy of the order dated 01.03.2021 of the Hon'ble NCLT in the matter of Huhtamaki PPL Ltd. vs. Manpasand Beverages Limited bearing CP (IB) No. 503/2019 as ANNEXURE A-6.*
3. *True copy of the order dated 13.04.2021 of the Hon'ble NCLT in CP (IB) No. 503/2019 as ANNEXURE A-7.*
4. *True copy of the judgment dated 28.03.2023 of Hon'ble Supreme Court of India in SLP (Civil) No. 6452/2021 as ANNEXURE A-8.*
5. *True copy of the legal notice dated 17.04.2023 sent on behalf of the Financial Creditor to the Corporate Debtor and its director along with proof of delivery. as ANNEXURE A -9(COLLY).*

9. It is stated that as per the mutual agreed between the parties, the financial creditor disbursed an amount of Rs. 2,65,00,000/- in the bank account of the Corporate Debtor vide RTGS (Ref. No. HDFCR52019062784466038) on 27.06.2019. The applicant has attached the copy of the bank account maintained with the HDFC Bank at page No. 24 where the details of the said RTGS appear.

10. The applicant states that due to financial crises and business hardships, the Corporate Debtor sought time to repay the loan on numerous occasions and several

assurances were given time and again to repay the loan however, the Corporate Debtor failed to repay the same.

11. On 01.03.2021 this Tribunal ordered CIRP of the Corporate Debtor in CP (IB) No. 503/2019 on an application by an Operational Creditor viz. Huhtamaki PPL Ltd. On 03.03.2021 a settlement was arrived between the said Operational Creditor and Corporate Debtor pursuant to which application under Section 12A of IBC was filed which was dismissed by this Tribunal vide order dated 13.04.2021.
12. The Special Leave Petition being No. 6452/2021 was filed before the Hon'ble Supreme Court against the said order of this Tribunal. Hon'ble Supreme Court allowed the said SLP vide order dated 28.03.2023 and the order of this Tribunal dated 13.04.2021 was set aside.
13. On 17.04.2023 the Financial Creditor herein has issued notice to the Corporate Debtor through his advocate Mr. Abhishek Devgan. The said notice is appended at page No. 247 to 248. The postal receipts and the tracking report are attached on page No. 250 to 254. The said notice was

delivered to the Corporate Debtor on 28.04.2023 as per the tracking report attached with application. Through the said demand notice the Financial Creditor called upon the Corporate Debtor to make a payment of Rs. 5,06,85,425/-. It was stated during the hearing held on 20.09.2024 by the learned Counsel for the applicant that the said notice was not replied by the Corporate Debtor and no amounts were repaid by the Corporate Debtor.

14. Notice was issued by this Tribunal to the Corporate Debtor on 12.06.2023 in response to which learned Advocate Mr. Jaimin Dave appeared on 24.07.2023 and sought time to file the reply and two weeks' time was allowed to the Corporate Debtor. In response to the notice reply was filed by the Corporate Debtor vide inward diary No. D-3257 dated 31.08.2023 which is affirmed by one Mr. Abhishek Singh stated to be Whole-time Director of Corporate Debtor, the Board Resolution authorizing him to file reply is attached at Annexure – A and is dated 05.04.2023. The summary of the reply of the Corporate Debtor is as under:

- (i) The application is not maintainable under Section 7 of IB Code, 2016 as the applicant is not a Financial Creditor.
- (ii) There is no financial debt having the commercial effect of borrowing and the applicant is not a financial creditor.
- (iii) Applicant has not produced any record or documents to prove the debt.
- (iv) The Corporate Debtor has relied upon the following judgments:-
 - (A) Gateway Offshore Private Limited & Anr. Vs. Runwal Realtors Private Limited being CP (IB) 954/MB/C-I/2019 of Hon'ble NCLT, Mumbai Bench.
 - (B) Gateway Offshore Private Limited & Anr. Vs. Runwal Realtors Private Limited being Company appeal (AT) (Ins.) No. 871 of 2022 of Hon'ble NCLAT, Delhi.
- (v) Applicant has not attached the Aadhar/PAN card etc.
- (vi) The record of default is not attached.
- (vii) Bankers Book Evidence Act certificate is not attached.
- (viii) The applicant has not demanded any repayment of the said loan for a very long period from 2019 to 2023.
- (ix) There is no agreement for interest.

- (x) Respondent has not denied receipt of Rs. 2,65,00,000/- from the applicant.
- (xi) The annual reports attached with the applications do not acknowledge the alleged debt as claimed by the applicant.
- (xii) Corporate Debtor thereafter sought dismissal of the present application.

15. To the reply of the Corporate Debtor a rejoinder was filed by the applicant under inward diary No. 3547 dated 14.09.2023. The summary of the Rejoinder is as under:

- (i) The applicant has advanced the financial loan.
- (ii) Mr. Dhirendra Hansraj Singh, Promoter and director of Corporate Debtor approached the applicant sometime in May-June, 2019 seeking an urgent advancement of loan of Rs. 2,65,00,000/- on account of arrest of his family members in a GST demand raised by the Tax Authorities. Relying upon the assurance of Mr. Singh, the Applicant transferred a sum of Rs. 2,65,00,000/- to the bank account of the Corporate Debtor vide RTGS (Ref. No. HDFCR52019062784466038) dated 27.06.2019 and

the same has not been disputed by the Corporate Debtor in its reply, at a mutually agreed interest rate of 24% p.a. It is the case of the applicant that the money advanced was against time value of money.

- (iii) The applicant further states that without prejudice to the above, even if it is presumed that the abovementioned loan is an interest free loan repayable on demand it would still qualify as a financial Debt in terms of Section 5(8) of the IB Code, 2016.

Section 5(8)

*(8) "financial debt" **means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money** and Includes-*

(a) money borrowed against the payment of interest; (b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent:

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument:

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis,

(f) any amount raised under any other transaction, including any forward sale or

purchase agreement, having the commercial effect of a borrowing;

On perusal of Section 5(8) of the Code, the use of the term 'if' after the word interest denotes/emphasizes its non-mandatory nature and cannot be construed as a precondition for a loan to qualify as a financial debt under Section 5(8) of the Code.

Hon'ble Supreme Court in M/s Orator Marketing Pvt. Ltd vs M/s Samtex Desinz Pvt. Ltd. has observed that Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt would have to be construed to include interest free loans.

"31. At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. 'Default' means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of 'debt' is also expansive and the same includes inter alia financial debt. The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial

Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body."

(emphasis supplied)

- (iv) As regards the record of default with information utility the applicant has filed the same through an IA being No. 1349 of 2023 vide inward diary No. E-2034 dated 28.11.2023 and the same was taken on record.
- (v) Applicant thereafter has attached the copy of summons issued by the Security and Exchange Board of India (SEBI) under No. SEBI/HO/IMD/IMD-1 DOF5/P/OW/2021/23540/1 dated 13.09.2021.
- (vi) At page 48 of the rejoinder, from the said summons by SEBI, it is observed as under:

"37. On scrutiny of books of accounts, it was observed that Manpasand has received various loans from Mr. Dharendra Singh during April 1, 2018 to March 31, 2020 and the balance outstanding as on 31 March 2020 to be paid to Mr. Dharendra Singh is INR 15.68 cr. However, on comparison of the books of accounts with the bank statements, it was observed that funds were received from various parties vis. Mr. Dharendra Singh, Ms. Sushma D Singh, Dharendra Singh HUF and Yoginkumar Ashokbhai and the same were disclosed as loan received from Mr. Dharendra Singh. The details are as under:

Date	Bank Account	Received from	Amt. (INR Cr.)	Remarks
14-06-2019	PNB 026143	Sushma D Singh	0.15	Accounted as loan from DH Singh
14-06-2019	PNB 026143	Sushma D Singh	0.30	Accounted as loan from DH Singh
27-06-2019	PNB 026143	Dhirendra Singh HUF	0.55	Accounted as loan from DH Singh
27-06-2019	PNB 026143	Yoginkumar Ashokbhai	2.65	Accounted as receipts from Yoginkumar Ashokbhai and transferred to DH Singh
30-10-2019	UBI 050052	Sushma D Singh	0.16	Accounted as loan from DH Singh

As a member of the audit committee which approved the financial statements of the Company, you are advised to explain the aforesaid discrepancies with relevant documentary evidences.”

(vii) It is the contention of the applicant that though he has advanced the amount to the Corporate Debtor, the Corporate Debtor has incorrectly entered in his books the loan as have being received from the Director of the Corporate Debtor and the said summons from SEBI prove beyond doubt the case of the applicant herein.

(viii) As regards the issue of limitation, the applicant has in para – 32 state as under:

“32. That the contents of Para 52-61 of the reply, unless whatever is a matter of record, are denied being baseless, false and devoid of merits. It is iterated that the Applicant immediately extended his financial support of Rs 2,65,00,000/- to the Corporate Debtor on account of arrest of Mr Singh's family members in a OST demand proceedings on 27.06.2019. Thereafter from June

2019- Feb 2021 Mr Singh on behalf of the Corporate Debtor gave various assurances for repayment of loan along with interest and kept on delaying it on one pretext or the other. Further the Corporate Debtor fell in the rigors of CIRP in the matter of Huhtamaki PPL. Ltd. vs Manpasand Beverages Ltd. bearing CP(IB) No. 503/2019 vide order dated 01.03.2021 and moratorium triggered. Once the matter was settled, Hon'ble Supreme Court allowed for the withdrawal of CIRP and consequently moratorium was lifted, the Applicant raised the demand notice seeking repayment of loan along with interest. Since the loan was repayable on demand and was recalled for the first time vide legal notice dated 17.04.2023 therefore the default occurred on 27.04.2023. Since the period of limitation commences from the date of default therefore the present Application is well within the limitation period."

16. Order dated 01.05.2024 records as under:

Learned counsel for the respondent submits that order of CIRP against the Corporate Debtor was already passed by this Tribunal in another CP(IB) 847/2019 on 11.09.2023. The said order was assailed before the Hon'ble NCLAT in Company Appeal No. 1205/2023 in which order of CIRP has been stayed. Next date in said appeal is 13.05.2024.

It is seen that our order of the CIRP passed in aforementioned CP(IB) has only been stayed not set aside till date. No useful purpose will be served by keeping the present application pending on the Board. Therefore, we dispose of this application along with the connected IA with liberty to re-agitate if the CIRP

order is set aside by the Hon'ble NCLAT or is withdrawn.

Further, in case the CIRP order is upheld by the Higher forum, further liberty is given to the applicant to file claim before the concerned IRP as per law.

Accordingly, **C.P.(IB)/129(AHM)2023** & **IA/1349(AHM)2023** are disposed of.

17. Restoration Application No. 16/2024 was filed by the applicant and was heard for the first time on 25.06.2024.

Notice in the said restoration application was issued by this Tribunal on 12.06.2024. Order dated 03.07.2024 records as under:

Rst. App/16(AHM)2024

Now, the physical copy of the service report has been filed on 03.07.2024 vide inward diary No. 4963 which reflects that notice which was sent through Regd. A.D. Post. on 20.06.2024 delivered on 24.06.2024 and through E-mail was showing delivered on 20.06.2024. Service is considered sufficient and completed.

Despite deemed service neither anyone has appeared on the last date of hearing nor today. Learned Counsel Ms. Hirva Dave, who appeared in the main matter in the past for the Respondent, states that no objection has already been given to the client and they are no more counsel for the respondent in the matter.

On perusal of the order dated 01.05.2024 passed by this Tribunal reflects that liberty was given to applicant to file claim before the concerned RP as per the law while disposing of the CP (IB) No. 129/2023 as Corporate Debtor was already admitted to CIRP on 11.09.2023 in another CP (IB) No. 847/2019.

Since, the order dated 11.09.2023 passed by this Tribunal against the Respondent / Corporate Debtor in CP (IB) No. 847/2019 has been set aside by the Hon'ble NCLAT on 28.05.2024 in view of the settlement arrived between the parties in that matter vide Company Appeal No. 1205/2023.

Therefore, restoration application being **Rst. App/16(AHM)2024** is allowed and CP (IB) No.129/2023 as well as IA/1349/2023 are restored on board.

CP (IB) No. 129/2023 as well as IA/1349/2023

Let fresh notice be issued both the CP (IB) and IA to the Respondent by the Registry, returnable by next date. The Applicant is directed to collect the notice from the Registry within three days and serve upon the Respondent along with copy of this order through Registered Ad post / Speed-post, Dasti mode as well as on the registered email ID of the Respondent registered with the MCA within seven days.

Proof of Service be filed by way of an affidavit before the next date of hearing.

List the both matters for further consideration on 12.08.2024.

18. Thereafter, the case was renumbered and was listed as RCP/5/2024 on 12.08.2024. None appeared on behalf of the applicant on that day. Vide order dated 04.09.2024, the Corporate Debtor was set ex-parte and the matter was listed for arguments on 20.09.2024.

19. Written synopsis was filed by the applicant herein under diary No. D-7149 dated 20.09.2024, the same has been considered.
20. We have heard the learned Counsel for the applicant. The respondent has been set ex-parte vide order dated 04.09.2024. However, reply available on record by the Corporate Debtor and has been considered by us.
21. The applicant has placed the copy of the Bank account of the applicant maintained with the HDFC Bank through which sum of Rs. 2,65,00,000/- was disbursed by the applicant to the respondent on 27.06.2019 through RTGS (Ref. No. HDFCR52019062784466038).
22. The said loan was directly not acknowledged by the Corporate Debtor in its financial statement for the year 2020. However, the summons issued by the SEBI being dated 13.09 2021 clearly show that in what manner loans from the applicant were treated by the Corporate Debtor in their books of account. No sur-rejoinder was filed by the respondent. In our view, the comments from SEBI are self-explanatory.

23. As regards the recall notice issued by the applicant is concern, the same was delivered on the respondent on 28.04.2023 and the respondent in his reply has not denied the receipt of the said demand notice rather they are raised flimsy grounds in defence.
24. The applicant has attached the record of default with information utility through IA being No. 1349 of 2023 vide inward diary No. E-2034 dated 28.11.2023 and perusal of the same reveals that Form -D was issued on 02.10.2023 with status "deemed to be authenticated" and specifies the amount in default as Rs. 5,08,94,520/-.
25. As regards limitation, the Corporate Debtor was in CIRP from the period 01.03.2021 till 28.03.2023 and admittedly no fresh CIRP applications could have been filed. The applicant was again admitted to CIRP in another matter by order of this Tribunal in CP (IB)No. 847/2019 vide order dated 11.09.2023 which was set aside by Hon'ble NCLAT on 28.05.2024 in Company Appeal No. 1205/2023. As such the entire period spent by the Corporate Debtor in CIRP has to be excluded for the purpose of calculation of limitation

hence, in our view, limitation would not come in way in the present matter.

26. As regards the debt being financial debt or not we agree with the applicant more particularly when they cite judgment of Hon'ble Supreme Court in the matter of Orator Marketing Pvt. Ltd. (supra). In the present case to recall notice was delivered to the Corporate Debtor.

27. As regards interest we are not deciding the quantum of the same since principle amount is more than Rs. 1.00 Crore and leave the same to the wisdom of the RP.

28. Applicant has appended with application the proof of his identity.

29. In our considered view, applicant has proved beyond doubt that there exist a principle debt itself is more than Rs. 1.00 Crore as regards the claim of interest, IR may decide on the same. In our considered view, the present application is complete and deserves admission.

30. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Respondent/Corporate Debtor **Manpasand Beverages Limited** is **admitted** in Corporate Insolvency Resolution Process under section 7 of the Code.
- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
- 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 any court of law, tribunal, arbitration panel or other authority;*
 - b. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
 - c. *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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
 - d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*

- e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements 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.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.
- (v) As proposed by the Financial Creditor, we appoint Mr. **Mr. Manohar Lal Vij**, having Registration No. IBBI/IPA-001/IP-P-01480/2018-2019/12269 having AFA valid upto 30.10.2024 under section 13 (1)(c) of the Code to act as Interim Resolution Professional

(IRP). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby

directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the financial creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of

Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

31. Accordingly, this Application **RCP(IB)/5(AHM)2024 (Old Case No. CP (IB) No. 129 of 2023)** is admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

MD

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1863 of 2024

In the matter of:

**Abhishek Singh,
Suspended Directors of Manpasand Beverages Ltd.**

....Appellant

Vs.

Yoginkumar Ashokbhai Patel & Anr.

...Respondents

For Appellant

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Himanshu Satija, Mr. Harsh Saxena, Mr. Shevaaz Khan, Ms. Ridhi Ranjan, Mr. Aditya Shukla, Advocates.

For Respondents

**Mr. Gaurav Mitra, Mr. Abhishek Devgan, Advocates for R1
Mr. Vishal Hirawat, Mr. Mrigank Kumar, Advocates for R2.**

ORDER

(Hybrid Mode)

26.09.2024: Heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant as well as Shri Gaurav Mitra, Learned Senior Counsel for the Respondent.

2. This Appeal has been filed against the order dated 24.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal) Ahmedabad Division Bench, Court-1 by which order the Adjudicating Authority has admitted Section 7 application filed by the Respondent herein. The earlier application was disposed of on account of insolvency had commenced against the Corporate Debtor which proceedings were restored by the Adjudicating Authority vide its order dated 03.07.2024 and thereafter notices were issued. Nobody appeared for the Corporate Debtor, hence, the Adjudicating Authority proceeded ex parte against the Corporate Debtor and by the impugned order has admitted Section 7 application.

3. Counsel for the Appellant challenging the order submits that there was no financial debt which was claimed in Section 7 application. The amount of Rs.2,65,00,000/- which was transferred by RTGS is not even denied, however, the nature of the debt that it was financial debt was denied by the Appellant and Corporate Debtor has filed reply in the earlier round raising question of maintainability of the application and all other pleas. It is submitted that the Adjudicating Authority has relied on the summons issued by the SEBI to come to the conclusion that the amount was accepted as loan.

4. We have also looked into the said observations of the Adjudicating Authority which is recorded in paragraph 15 (vi). A perusal of the said summons to the corporate debtor cannot indicate that there was any admission on the part of the corporate debtor accepting the amount as financial debt. The question of limitation has also been raised by the Appellant and submits that the period during which earlier CIRP was going cannot be excluded whereas Adjudicating Authority has excluded the said period giving benefit of Section 14 of the Limitation Act. Counsel further submits that the Appellant was not served notices. Since the e-mail of the corporate debtor was not functional and registered posts were sent to the Factory.

5. Shri Gaurav Mitra, Learned Counsel for the Respondent submits that the amount was transferred by RTGS which is not an issue and has correctly been accepted by the Adjudicating Authority. He submits that the SEBI summons clearly mentions that the amount has been transferred by the financial creditor which is noted by the Adjudicating Authority in paragraph 15(vi). It is submitted that it was a financial debt. It is further submitted that the notices were sent in the restoration application as well as in Section 7 application which was served on the corporate debtor. Despite the service, nobody appeared, hence, the Adjudicating Authority has rightly proceeded as ex parte and admitted Section 7 application.

6. In Part-IV of the application, there was no other material by the financial creditor to indicate the nature of financial debt. We have looked Part IV and Part V apart from the transfer of the amount by RTGS there is no other

material or pleading. We are of the view that submissions made by the parties require consideration.

7. Counsel for the Appellant submits that to show his bonafide, Appellant is ready to deposit Rs.2,65,00,000/- in the interest bearing account. Let amount of Rs.2,65,00,000/- be deposited by way of Fixed Deposit in favour of 'Registrar, National Company Law Appellate Tribunal, New Delhi' within one week.

8. Counsel for the Appellant submits that even publication has not yet been made by the IRP.

9. Issue Notice. Let reply be filed within two weeks.

10. List this Appeal for disposal on 17.10.2024. Rejoinder, if any, be filed before the date fixed.

In the meantime, the impugned order dated 24.09.2024 shall remain suspended.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Anjali/nn