



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.3659 of 2021

and W.M.P.Nos.4190 and 4191 of 2021

M/s.Appollo Distilleries

and Breweries Pvt. Ltd.,

Rep. by its Director, Mrs. Sheena Adarsh,

346-A, Pantheon Road, Egmore,

Chennai 600 008.

.. Petitioner

Vs.

1.Union of India

Through Ministry of Corporate Affairs

A - Wing Shastri Bhavan Rajendra Prasad Road

New Delhi 110001.

2.Registrar of National Company

Law Tribunal Chennai Corporate Bhavan (UTI Building)

3rd Floor No.29 Rajaji Salai

Chennai 600001.

3.S.Rajendran

Erstwhile Resolution Professional & Empee Distilleries Ltd.

4.South (India) Hotels Pvt. Ltd.

3 Kannel Lane, Egmore, Chennai 600008.

5.M.P.Purushothaman

6.Aruna Kandoth

7.Shasji Purushothamana

8.Nisha Purushothaman

9.R.Rangachari

10.Suresh Raj Mandhok

11.SNJ Distiller Pvt. Ltd.

12.Empee Distilleries Ltd.

13.Sheeju Purushothaman



14.Venkatesh Iyengar Raghunathan

15.Punjab National Bank

No.63 Dr.Radhakrishnan Salai Mylapore
Chennai 600004.

16.Goodyield Investments Pvt. Ltd.

No.2 D, Elcanso Complex,
Casa Major Road, Egmore,
Chennai 600008.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records pertaining to the proceedings in MA/731/IB/2019 in CP/280/(IB)/2018 dated 27/06/2019 on the file of the 2nd respondent and quash the same as bereft of jurisdiction.

For Petitioner	:	Mr.Gopal Sankaranarayanan for Mr.C.Deepak Kumar
For Respondents	:	Mr.G.Baskaran CGSC for RR 1 and 2
	:	Mr.P.S.Raman, Senior Counsel for Mrs.M.Savitha for R-3
	:	Mr.P.H.Arvinth Pandian, Senior Counsel for Mr.Avinash Krishnan, Ravi for RR 11 and 12
	:	Mr.V.Lakshmi Narayanan for M/s.N.V.Prakash for R-16
	:	Mr.M.L.Ganesh for R-15
	:	R-13 not ready in notice
	:	No appearance for other respondents

ORDER

(made by the Hon'ble Chief Justice)

The petition under Article 226 of the Constitution is directed not so much against the merits of the order dated January 12, 2021, as it is to question the jurisdiction exercised by the National Company Law Tribunal (for short, 'NCLT') in entertaining the application on which the order was passed.



2. The matter pertains to the corporate insolvency proceedings in respect of Empee Distilleries Limited, the 12th respondent herein. The creditors of such corporate debtor instituted proceedings before the NCLT that culminated in a resolution plan being put in place which, according to the petitioner, has attained finality upon this Court and the Supreme Court having approved the same or, at any rate, refused to entertain the challenges against the resolution plan. Indeed, one set of challenge was upon a petition under Article 226 of the Constitution being filed here and the special leave petition against the order passed therein being carried to the Supreme Court; while the other set of proceedings arose from the appeal against the resolution plan filed before the National Company Appellate Law Tribunal and the further appeal or attempted appeal before the Supreme Court from the order of the NCLAT.

3. The petitioner asserts that like a civil suit, which is completely concluded upon a final decree passed therein, insolvency proceedings before the NCLT reached their conclusion upon a resolution plan being accepted and directed to be implemented. In particular, the petitioner says that the resolution professional loses all authority and status qua the corporate debtor and has to be regarded as a busybody upon the resolution plan being accepted, so much so that any application that may specifically not have been disposed of by the NCLT while accepting the resolution plan may not be revived at all or, at any rate, revived by the erstwhile resolution professional, who has no further nexus with the matter.

4. It appears that an avoidance application pertaining to a share transaction between the fourth respondent herein, South (India) Hotels Private Limited, and the 16th respondent herein, Goodyield Investments Private Limited, was filed by the resolution professional prior to the resolution plan being accepted. However, the avoidance application does not appear to have been pursued and the petitioner claims that like a pending interlocutory application in a civil suit which has been finally disposed of, the avoidance application must be regarded to have died its natural death upon the resolution plan being accepted by the NCLT and the same now having attained finality up to the Supreme Court level.

5. The transaction in question pertains to the shares held by Empee Distilleries Limited in the petitioner herein which were pledged in favour of South (India) Hotels, said then to have been a sister concern of Empee Distilleries Limited, in connection with a loan agreement of January, 2016. Empee Distilleries Limited apparently obtained a substantial loan from South (India) Hotels and South (India) Hotels apparently invoked the pledge on or about October 15, 2018 sold the pledged shares



6. The 11th respondent herein, SNJ Distilleries Private Limited, was the successful resolution applicant, the purchaser of Empee Distilleries Limited, so to say in more direct language, and it is the submission of such successful resolution applicant that the shares of the corporate debtor in the petitioner was a valuable asset of the corporate debtor and the successful resolution applicant had acquired the corporate debtor on the understanding that such shares would continue to be held by the corporate debtor since an avoidance application had been filed by resolution professional, obviously at the prodding of the committee of creditors pertaining to the corporate debtor. According to the successful resolution applicant and the erstwhile resolution professional, who is also represented in course of the proceedings in this Court, the present market value of the controlling interest in the petitioner herein may be to the tune of Rs.150 crore, though the factory of the petitioner herein has remained closed for the last three years and the petitioner herein is the corporate debtor in unconnected insolvency proceedings instituted against it in Bengaluru.

7. So much for facts; only for the purpose of appreciating the legal issue involved. The question of jurisdiction that the petitioner raises is the authority of the NCLT to continue with the avoidance application despite the resolution plan already being in place. In other words, the petitioner suggests that since the transaction has not been avoided by an order of a competent authority prior to the resolution plan being accepted, the transaction is deemed to have gone through and it may not be assailed in the already concluded insolvency proceedings, pertaining to Empee Distilleries Limited.

8. Per contra, the successful resolution professional asserts that a meagre amount of Rs.150 crore cannot be permitted to slip through the cracks so to say, particularly since the successful resolution applicant took the assets of the corporate debtor into account while making its bid and having the resolution plan accepted by the NCLT.

9. The legal issue is, indeed, of some substance and whether it is Rs.15/- or Rs.150 crore involved, it makes little difference. It is the importance of the legal issue that may have impelled this Court to receive the petition and, to be fair to the petitioner, the petitioner has been substantially heard. However, since the matter pertains to the Insolvency and Bankruptcy Code, which, as its name suggests, is a code unto



itself, and specialised fora are created thereby or, at any rate to entertain proceedings thereunder, it may be better to allow the NCLT to answer the legal issue before the view expressed is tested elsewhere.

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10. Accordingly, W.P.No.3659 of 2021 is disposed of by requesting the NCLT, Chennai, to dispose of the avoidance application together with the other applications that may have been filed in connection therewith as expeditiously as the business of that forum may permit, and, preferably, within eight weeks of the receipt of a copy of this order. Till any contrary order is passed by the NCLT or till the disposal of the avoidance application, whichever is later, there will be no further transaction in the shares pertaining to the petitioner herein. Further, no fixed asset of the petitioner should be alienated or encumbered without the express previous leave of the NCLT, Chennai, and no other asset or stock in trade or the like may be dealt with or disposed of or alienated or encumbered or any third party right created in respect thereof, except in the usual or ordinary course of business. Here again, it is recorded that according to the successful resolution applicant, the factory of the petitioner remains closed for three years with little prospect of reopening in the immediate future.

11. The observations made herein are for the limited purpose of indicating the nature of the disputes and disposing of the petition without answering the legal issue. Nothing said herein should prejudice any of the parties, whether before the NCLT in the avoidance application or elsewhere, including the insolvency proceedings in Bengaluru.

12. The petitioner herein may file its counter-affidavit to all the pending applications before the NCLT within a week from date. It will be open to the successful resolution applicant to seek leave of the NCLT to file any pleadings. It is specifically recorded that this order will not preclude the petitioner herein to assert before the NCLT that the avoidance application initially filed by the resolution professional does not survive; just as the resolution professional and the successful resolution applicant may contend otherwise.

13. There will be no order as to costs. Consequently, W.M.P.Nos.4190 and 4191 of 2021 are closed.

Sd/-
Deputy Registrar (CS)

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Sub Assistant Registrar



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To:

1.Union of India

Ministry of Corporate Affairs A - Wing,
Shastri Bhavan, Rajendra Prasad Road,
New Delhi 110001.

2.The Registrar of National Company

Law Tribunal, Chennai Corporate Bhavan,
(UTI Building), 3rd Floor, No.29, Rajaji Salai,
Chennai 600001.

3.The Branch Manager,

Punjab National Bank,
No.63 Dr.Radhakrishnan Salai,
Mylapore, Chennai 600004.

+lcc to Mr.G.Baskaran, Central Government Standing Counsel
Sr No.38248

W.P.No.3659 of 2021

AJS (CO)

PR (13/09/2021)