IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.10.2024

PRONOUNCED ON: 09.05.2025

CORAM:

THE HON`BLE MR.JUSTICE A.A.NAKKIRAN

A.No.3353 of 2024 in CS.No.28 of 2017

M/s.Empee Distillers Ltd
Represented by its Managing Director
Having registered office at
No.72, Greams Road, Thousand Lights
Chennai-600 006.
(substituted as per order dated 24.08.2023 in
Application No.4310 of 2020)

...Applicant/Defendant

Vs.

Mohan Breweries and Distillers Limited
Represented by its
Senior Deputy General Manager-Accounts
G.Samuthiram
No.7, Selva Street, Madurai Meenkashi Nagar
Valasaravakkam
Chennai-600 087. ...
Respondent/Plaintiff

Prayer: This application is filed to reject the plaint filed in C.S No.28 of 2017 in exercise of its power under Order 7 Rule 11(a) r/w order 7 Rule 11(d) of CPC.

For Applicant : M/s.Avinash Krishnan Ravi

For Respondent : Mr.G.Krishnakumar

ORDER

1. This application has been filed by the defendant to reject the plaint filed in C.S No.28 of 2017 in exercise of its power under Order VII Rule 11(a) r/w Order VII Rule 11(d) of CPC.

2. The learned counsel for the applicants contended that the suit was filed by the respondent/plaintiff on 02.01.2017 for recovery of money, directing the applicant/defendant to pay the respondent/plaintiff a sum of Rs.4,38,34,396.10. By virtue of the order dated 01.11.2018 in company petition No.280/IB/2018 passed by the National Company Law Tribunal, the applicant/defendant company entered into Corporate Insolvency Resolution Process and an interim Resolution Professional was appointed. As a consequence of the Moratorium specified under Section 14 of the Insolvency and the Bankruptcy Code, 2016 the instant suit was kept abeyance. Subsequently, one M/s.SNJ Distilleries emerged as the successful Resolution Applicant and the Hon'ble NCLT vide its order dated 20.01.2020 was pleased to allow the Resolution Plan. As a consequence of the Resolution Plan being approved, the Moratorium ceased to operate. Leveraging upon the same, the respondent/plaintiff revived the suit and the same is recorded vide the

order of this Court dated 13.03.2020.

3. The learned counsel further contended that the respondent was duty bound to file a claim before the Resolution Professional after the admission of the defendant company into Corporate Resolution Process. Trite in law that once a Resolution Plan is approved by the Hon'ble Adjudicating Authority, the Act provides for the Successful Resolution Applicant to take over the reigns of the Corporate Debtor in a clean slate devoid of any additional liabilities. In the instant suit, the claim of the respondent/plaintiff to the tune of Rs.4,38,34,396.10 stands extinguished invariably by virtue of the tenets envisaged under Section 31 of the Insolvency and Bankruptcy Code, 2016. It is the case of the respondent/plaintiff that upon the commencement of the CIRP proceedings, a claim was filed before the Resolution Professional and their claim was not considered by the Resolution Professional. When the resolution professional rejects a claim, the creditor may approach the Hon'ble National Company Law Tribunal against the rejected claim under Section 65 of the Insolvency and Bankruptcy Code, 2016. In the instant case, the respondent/plaintiff has failed to substantiate as to whether it had

pursued its rejected claim before the Hon'ble NCLT. Nonetheless, it is an admitted fact that the claim of the respondent/plaintiff has not found its place in the approved Resolution Plan and that is undisputed. The respondent/plaintiff had placed reliance on the supreme Court's ruling, Fourth Dimension Solutions Ltd. V. Ricoh India Ltd & Ors Civil Appeal No.5908 of 2021 wherein the Hon'ble Apex Court had granted liberty to the respective parties to contest the pending arbitration proceedings before the Arbitral Tribunal even after the approval of the Resolution Plan. The position of the Hon'ble Supreme Court stated supra came forth for consideration before the Hon'ble NCLAT, Delhi, in the case of Shapporji Pallonji and Co. Pvt. Ltd. v. Kobra West Power Company Limited and Ors. (MANU/NL/0165/2023 (NCLAT) [page 200, paragraph 18 and 19 of typed set of case law]. In support of his contentions, the learned counsel for the applicant/defendant cited the following cases:

i) Essar steel India Ltd., COC Vs Satish Kumar Gupta & Co. [(2020) 8 SCC 531) [page 86 of typed set of case Vol.I]

ii) Ghanashyam Mishra & Sons Ltd., V.Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657 [page 174; para 102 of typed set of case laws-Vol-I] iii)Sirpur Paper Mills Limited V. I.K. Merchants Pvt. Ltd., (MANU/WB/0368/2021] [Page No.212 of typed set of case laws - Vol-I]

iv)Union of India Ors. V.Ramswarup Lohh Udyog and Ors.[MANU/WB/1433/2024] [Page 214 of typed set of case laws - Vol-I]

v) M/s.Akash Construction V M/s. Indira Priyadharshini Hydro Power Private [O.M.P.(COMM) 283/2017] [Page 221 of Typed set of case laws - Vol.1]

4. The learned counsel further submitted that the Resolution Professional had observed that the claims could not be ascertained in view of the pending litigation and that in the event the amount gets determined the contingency provision will be used. As per the provision of the approved resolution plan, the funds specifically allocated for contingency claim was set up for a period of 6 months which shall be used on a first come first serve basis. The said period expired in July 2020 and therefore, the fund set for contingency claim also ipso facto stands abated. The Hon'ble Apex Court has held that if a subsequent event causes the suit/litigation to become infructuous, then in such circumstances, it is the duty of the court to dispose the same in the interest of justice. In light of the above

contention, the applicant/defendant places reliance on judgement passed by the Apex Court in Shipping Corporation of India Ltd., V. Machado Brothers and Others [2004 11 SCC 168] [page 11, 12 and 13 of the typed set of case laws Vol.II, para 23-25; 28-29 and 30-31. The Hon'ble Madras High Court in All India Anna Dravida Munnetra Kzhagam and Ors. Vs. All India Anna Dravida Munnetra Kzhagam and 9 Ors. A.S Nos.337 to 339 of 2022 & CRP No.2347 of 2022 applying the principle laid down in Shipping Corporation of India stated supra reiterated that a suit which has become infructuous by a subsequent event is liable to be rejected under Order 7 Rule 11 of CPC. In view of the above, he prays to dismiss the suit and allow this application.

5. The learned counsel for the respondent/plaintiff contended that based on the memo dated 20.08.2019 filed by the erstwhile defendant's counsel stating about the pendency of IBC proceedings, the respondent herein filed a claim before the resolution professional and based on the same, the resolution professional in his summary has listed the name of operational creditors and in Serial No.96, name of this respondent is shown and sum of Rs.4,38,396/- is shown as the amount claimed. In the summary provided,

the following clause namely No.2 finds a place which reads as follows:

> *"claims under Litigation" RP could not determine these claims in view of the pending litigation in various forums when the amounts gets determined contingency provisions will be used to such determined dues".*

The above said summary was brought to the notice of this Court and this Court vide order dated 13.03.2020 has recorded the same and posted the case on the request of the defendant to verify the position. But, interestingly and purposefully in the resolution plan, the claim of the respondent has not been included by the resolution professional nor the resolution applicant had taken any effective steps either to include respondent claim in the resolution plan nor made any payment from the contingent fund.

6. The learned counsel further submitted that the Hon'ble Supreme Court in Fourth Dimension case holds that if at the time of preparation of resolution plan, there are proceedings pending for the adjudication of the amount of claim, the same can be allowed to proceed despite the approval of the resolution plan. On the basis of this decision, a creditor can continue to

contest the proceedings and raise a claim and / or commence execution proceedings against a Corporate Debtor even after the Resolution Plan has been approved. Even though the Hon'ble Supreme Court has consistently upheld and reiterated the 'clean slate' doctrine, in view of decision in Fourth Dimension, it is legally sustainable in cases where the amounts of claim, as submitted to the IRP are under adjudication at the time of Corporate Insolvency Resolution Process. Having kept the claim contingent by the resolution professional and subsequently omitted to include the claim cannot be construed as extinguished in the eyes of law. As stated supra and as per decision Fourth dimension case, the present case has to be continued against the defendant herein. Hence as raised by the applicant that by operation of law, the present suit is barred by law is unsustainable and liable to be rejected at the threshold.

7. The learned counsel further submitted that the case law relied by the applicant in Adani Power Ltd V. Shapporji Pallonji and Co. Ltd and Ors (2023) ibclaw.in 338 SC page no.202 of the Index to Citation filed by the applicant, more particularly the last para of page no.203, it is stated that there is no impediment to proceed with the claim, however the same is

subject to the rights and obligations of the resolution applicant. Hence the present suit has to be rejected at the threshold has got no legal sanctity. In the present case, despite the respondent making a claim, the resolution professional kept the claim subject to the outcome of the judgement, if any passed in the present case. However, the resolution professional failed to include the claim in the resolution plan as such that will not preclude the respondent from proceeding with the present suit against the applicant in view of the admitted fact that at the time of preparation of resolution plan, the present suit is pending against the applicant and more over, as stated supra, the Hon'ble Supreme Court in Fourth Dimension Solution Ltd Vs. Ricoh India Ltd & Ors Civil Appeal No.5908 of 2021 has validated the continuation of arbitration proceeding between the Corporate Debtor and creditor despite the approval of the resolution plan. Hence, he prays to dismiss the application.

8.This Court heard both sides and also perused the documents available on record.

9. The point for consideration is that the petition is to be allowed or not?

10. The contention of the applicant/defendant is that the respondent/plaintiff filed the above suit for recovery of a sum of Rs.4,38,34,396.10 from the applicant/defendant. The applicant/defendant filed the above application under Order 7 rule 11 (a) & (d) to reject the plaint. The applicant/defendant contended that on 01.11.2018, the NCLT in Company Petition No.280/IB/2018 appointed an interim resolution professional. In view of the Moratorium specified under Section 14 of the Insolvency and Bankruptcy Code, 2016, the suit was kept in abeyance. On 20.01.2020, the resolution plan was allowed. Consequently, the Moratorium ceased operate. On 13.03.2020, the suit is revived.

11. It was further contended that the respondent was duty to file a claim before the Resolution professional after the admission of the defendant company into Corporate resolution process. Even if the claim was made, it does not form part of the approved plan, the claim of the respondent shall De jure stand extinguished. As per section 31 of the Insolvency and Bankruptcy code once a resolution plan is approved, it is binding on all parties irrespective of dispute or unclaimed. The rationale behind the clean

slate theory provides for the Resolution Applicant to take over the course business with subsisting liabilities as approved by the Resolution Plan thereby avoiding unnecessary liabilities that may emerge at later stage posing hindrance to the successful resolution applicant. Then, it is stated that it is trite law that once a resolution plan is approved the successful resolution applicant to take over the reigns of the Corporate Debtor in a Clean slate devoid of additional liabilities. Hence, the suit clam stand extinguished as per section 31 of the Insolvency and Bankruptcy code.

12. It is further stated that the respondent/plaintiff preferred the claim and the same rejected by the resolution professional, the remedy is to approach the NCLT under Section 65 of the Insolvency and Bankruptcy code. The respondent/plaintiff did not choose to do so. The creditor though has the liberty to pursue any pending litigation, he cannot do so if it was not part of the resolution plan. The claim was found in Serial No.96. The resolution professional observed that the claims could not be ascertained in view of the pending litigation and that in the event the amount gets determined the contingency provision will be used. As per the provision of the approved

resolution plan the funds allocated for contingency claim was set up for a period of 6 months, the same shall be used on first come first serve basis and the said period also expired. Therefore, it seeks to reject the plaint.

13. The contention of the respondent/plaintiff is that the claim was made before the Resolution professional and he observed that claims under litigation RP could not determine these claims in view of the pending litigation in various forums when the amounts gets determined contingency provisions will be used to such determined dues" the said observation was brought to the notice this Court. The claim of the respondent has not been included by the resolution professional and the resolution applicant did not take any effective steps. No payment were made from the contingent fund. The pendency of the proceedings will not affect the Resolution plan. In the light of the above submission, the relevant provision under the IBC code is Section

14. Moratorium

(1)Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a)the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

In respect of the pending proceedings once the moratorium issued by the NCLT the pending proceedings will not be continued accordingly the proceeding were kept in abeyance on 01.11.2018.

In view of Section 31 (3) of the code which reads as under:

After the order of approval under sub-section (1),-

"the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

"the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

In view of Section 31 (3) (a) the moratorium was lifted on 13.03.2020 and the suit is revived.

14. On joint reading of the above said provisions at that time of moratorium, the proceedings were kept in abeyance and on approval of resolution plan the suit is revived. After this, there is yet another process to be continued as per the IBC code like creditors meeting, liquidation etc. Therefore, the approval of resolution plan has not come within the meaning under Order 7 Rule 11 (a) or (d) i.e. no cause of action or barred by law and hence, this application deserves to be dismissed.

15. Accordingly, this application is dismissed. No costs.

09.05.2025

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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A.A.NAKKIRAN, J.

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Pre-Delivery Order in
A.No.3353 of 2024
in CS.No.28 of 2017

09.05.2025