BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/HP/2022-23/16157]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of –

Empee Distilleries Limited (PAN: AAACE1687N) having address at - Old No. 47, New No. 99, Canal Bank Road, C.I.T. Nagar, Nandanam, Chennai, Tamil Nadu - 600035

In the matter of Empee Distilleries Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings under Section 15A(b) and 15HB of SEBI Act, 1992 (hereinafter referred to as, '**SEBI Act**') against Empee Distilleries Limited (hereinafter referred to as, '**Noticee/EDL/Company/You**') for alleged violation of provisions of Regulation 9, 13(1), 13(4), 50(1), 50(2), 50(3), 52(4), 52(5), 53, 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as, '**LODR Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter be referred to as, '**AO**') under Section15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the '**Adjudication Rules**'), vide order dated December 31, 2020 to inquire into and adjudge under Section 15A(b) and 15HB of SEBI Act the aforesaid alleged violation against the Noticee. The appointment of the AO was communicated *vide* order dated January 05,, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/HP/10527/2021 dated May 20, 2021 (hereinafter referred to as '**SCN**'), was issued to the Noticee in terms of Rule 4 (1) of Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of Section 15A(b) and 15HB of SEBI Act for the aforesaid alleged violations.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

Background of the Company

5. Company was incorporated on September 15, 1983. It is registered with RoC-Chennai and primarily involved in Hotels, Liquor, Sugar, Power, Packaging, Transport, Construction and Exports.

Analysis of alleged violation of LODR Regulations

6. SEBI received a reference dated November 01, 2018, March 01, 2019 and May 02, 2019 from IDBI Trusteeship Services Limited (**DT/ITSL**), for the listed Non-

Convertible Debentures (NCDs) of EDL. Vide the said reference, ITSL had, *inter alia*, informed that the issuer had not provided the information on the payment of interest and a notice of default dated August 20, 2018 was issued to the issuer company. Both equity and debt of EDL are listed. NCDs issued by EDL are only listed on BSE. The company has issued NCDs with two ISINs. Examination was carried out to ascertain compliance status of EDL with relevant provisions of LODR Regulations for the period April 01, 2018 to December 19, 2019.

7. As informed by BSE *vide* email dated February 03, 2020, the details of the NCDs issued by EDL are as under:

Whether equity is listed or not	Yes	
Debt - Privately placed/ Public issue	Privately placed	
No. of ISINs	2	
ISIN	INE180G07024	INE180G07032
Date of Issuance (Allotment) (Date of listing)	06-May-2016	20-Sept-2016
Date of Maturity	26-Apr-2021	26-Apr-2021
Frequency of Interest Payment	Monthly	Monthly
Amount of NCDs issued (Rs. in Cr.)	47.50	10
Date of Insolvency Proceedings initiated, in case of company is under Insolvency	Company is under NCLT process w.e.f. 01/11/2018	

8. A letter was also issued to the company on January 30, 2020 by SEBI. The company replied to SEBI *vide* letter dated February 11, 2020.

9. *Vide* email dated December 20, 2019, DT was asked to provide the compliance status of the relevant provisions of LODR regulations. Reply of DT was received *vide* email dated December 23, 2019.

10. The company is currently undergoing CIRP proceedings under the provisions of the IBC, 2016. The Debenture Holders have provided details of their claim to the Resolution professional at meeting of CoC (creditors of the company).

11. After considering the compliance status received from BSE, replies of EDL and DT, the alleged violations of relevant provisions of LODR Regulations are as under:

    Regulation 9 of LODR Regulations:

    Regulation 9 requires that listed entity should have a policy for preservation of documents, approved by its board of directors. It was observed that the Noticee has not provided any information under this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 9 of LODR Regulations.

    Regulation 13(1) of LODR Regulations:

    Regulation 13(1) requires the listed entity to ensure that adequate steps are taken for expeditious redressal of investor complaint. It was observed that the Noticee has not provided any information under this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 13(1) of LODR Regulations.

    Regulation 13(4) of LODR Regulations:

    Regulation 13(4) requires that the statement as specified in regulation 13(3) shall be placed, on quarterly basis, before the board of directors of listed entity. It was observed that the Noticee has not provided any information under this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 13(4) of LODR Regulations.

Regulation 50(1) of LODR Regulations:

Regulation 50(1) requires prior intimation to the stock exchange(s) at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable. On the basis of information provided by BSE and the Noticee, it was observed that the Noticee has not complied with this provision for both ISINs. Therefore, it was alleged that Noticee has not complied with Regulation 50(1) of LODR Regulations.

Regulation 50(2) of LODR Regulations:

Regulation 50(2) requires intimation to the stock exchange(s), its intention to raise funds through new non-convertible debt securities or non-convertible redeemable preference shares it proposes to list either through a public issue or on private placement basis, prior to issuance of such securities. On the basis of information provided by BSE, it was observed that the Noticee has not submitted the information in terms of this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 50(2) of LODR Regulations.

Regulation 50(3) of LODR Regulations:

Regulation 50(3) requires a listed entity intimate to the stock exchange(s), at least two working days in advance, regarding the meeting of its board of directors, at which the recommendation or declaration of issue of non-convertible debt securities or any other matter affecting the rights or interests or holders of non-convertible debt securities or non-convertible redeemable preference shares is proposed to be considered. On the basis of information provided by BSE, it was observed that the Noticee has not complied with this provision for both ISINs. Therefore, it was alleged that Noticee has not complied with Regulation 50(3) of LODR Regulations.

Regulation 52(4) of LODR Regulations:

Regulation 52(4) of LODR Regulations requires disclosure of line items prescribed under the said Regulation along with the half yearly / annual financial results. It was observed from the information provided by BSE that Noticee has not complied with this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 52(4) of LODR Regulations.

Regulation 52(5) of LODR Regulations:

Regulation 52(5) of LODR Regulations requires submission of a Certificate signed by the Debenture Trustee taking note of the contents prescribed under regulation 52(4). It was observed from the information provided by BSE that Noticee has not complied with this regulation. Therefore, it was alleged that Noticee has not complied with Regulation 52(5) of LODR Regulations.

Regulation 53 of LODR Regulations:

Regulation 53 of LODR Regulations requires that annual report of the listed entity shall include audited financial statements, cash flow statement, auditor's report, director's report, details of debenture trustees, related party disclosures. It was observed from the information provided by BSE that Noticee has complied for FY 2018 but not complied for FY 2019. Therefore, it was alleged that Noticee has not complied with Regulation 53 of LODR Regulations.

Regulation 54(1) and 54(2) of LODR Regulations:

Regulation 54(1) and 54(2) of LODR Regulations requires that listed entity shall maintain hundred percent asset cover to discharge the principal amount at all times for NCDs and disclosure to the stock exchange in quarterly, half-yearly, year-to-date and annual financial statements as applicable, the extent and nature of security created and maintained with respect to secured listed NCDs in the financial statements. It was observed from the information provided by BSE that Noticee has not complied with these regulations. Therefore, it was alleged that Noticee has not complied with Regulation 54(1) and 54(2) of LODR Regulations.

Regulation 55 of LODR Regulations:

Regulation 55 of LODR Regulations requires review of credit rating at least once a year. BSE has informed that the Noticee has not submitted disclosures in terms of this regulation about the credit rating. Therefore, it was alleged that Noticee has not complied with Regulation 55 of LODR Regulations.

Regulation 56 of LODR Regulations:

Regulation 56 of LODR Regulations requires a listed entity to submit certain documents such as annual report, certification on utilization of funds, change in credit rating, half yearly assets cover certificate, copy of notices, resolutions etc. to debenture trustee. Debenture trustee, *vide* email dated December 23, 2019 informed that the Noticee has not submitted the asset cover certificate for half year ended March 2017, March 2018, March 2019 and September 2019. Therefore, it was alleged that Noticee has not complied with Regulation 56 of LODR Regulations.

Regulation 57(1) of LODR Regulations:

Regulation 57(1) requires that the listed entity shall submit a certificate to the stock exchange within two days of the interest or principal or both becoming due that it has made timely payment of interests or principal obligations or both in respect of the non-convertible debt securities. Noticee submitted that they have complied with this regulation up to June 30, 2018. BSE has informed that the Noticee has submitted the certificates only for the month’s viz. May 2018 and June 2018 for both ISINs. Therefore, it was alleged that Noticee has violated the Regulation 57(1) of LODR Regulations.

Regulation 57(2) of LODR Regulations:

Regulation 57(2) requires a listed entity to provide an undertaking to the stock exchange(s) on annual basis stating that all documents and intimations required to be submitted to Debenture Trustees in terms of Trust Deed and SEBI (ILDS) Regulations, 2008, have been complied with. It was observed from the information provided by BSE that Noticee has not complied with this regulation. Therefore, it was alleged that Noticee has violated the Regulation 57(2) of LODR Regulations.

Regulation 58 of LODR Regulations:

Regulation 58 requires listed entity to provide hard copies of Annual Reports to holders of NCDs, who requested for the same, notices of meetings etc. In this regard, company has not provided any information. Therefore, it was alleged that Noticee has violated the Regulation 58 of LODR Regulations.

Regulation 60(1) of LODR Regulations:

Regulation 60(1) requires the listed entity to fix a record date for the purpose of payment of interest, dividend and payment of redemption or repayment amount or for such other purpose as specified by the stock exchange. It was observed from the information provided by BSE that Noticee has not submitted the information under this regulation for both ISINs. Therefore, it was alleged that Noticee has not complied with Regulation 60(1) of LODR Regulations.

Regulation 60(2) of LODR Regulations:

Regulation 60(2) requires submission of the Notice of record date in advance of at least seven working days for the purpose of payment of interest or redemption amount. It was observed from the information provided by BSE that Noticee has not submitted the information under this regulation for both ISINs. Therefore, it was alleged that Noticee has violated the Regulation 60(2) of LODR Regulations.

12. In view of the above, it was alleged that Noticee has violated provisions of Regulation 9, 13(1), 13(4), 50(1), 50(2), 50(3), 52(4), 52(5), 53, 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of LODR Regulations.

13. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under Section 15A(b) and 15HB of SEBI Act.

14. SCN was served to the Noticee through SPAD and also through its email address. In response to the SCN, Noticee filed its reply *vide* email and letter dated June 07, 2021. In the interest of justice, an opportunity of personal hearing through video conferencing was provided to the Noticee on January 20, 2022 vide Hearing Notice dated December 30, 2021. The hearing Notice was served upon the Noticee through email. Noticee did not appear on the scheduled date of hearing.

15. The submissions of the Noticee are as below:

"*As per the NCLT Chennai order dated 01/11/2018, EDL was brought under the Corporate Insolvency Resolution Process (CIRP) as per the provisions of Insolvency and Bankruptcy Code (IBC) 2016. Mr. S Venkata Sivakumar was appointed as the Interim Resolution Professional (IRP) and a public announcement was issued by the IRP on 5th November 2018. Mr. S Rajendran was appointed as the Resolution Professional (RP) by the NCLT Chennai on 13/12/2018. (copy attached).*

All creditors to the company were notified to file their claim in the appropriate Form with the IRP within 30 days of the public announcement as per Reg. 12(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

In continuation of the above process, IDBI Trusteeship Services Limited had submitted their claim with IRP for Rs. 56.61 crores including interest. We have verified and finalised their claim amount after our appointment. As per our calculation the admitted amount was Rs. 54.46 crores.

SNJ Distillers Private Limited had submitted their resolution plan on 17.07.2019 amounting to Rs. 475.04 crores for Empee Distilleries Limited which was approved by the Hon'ble NCLT, Chennai on 20th Jan. 2020. As per the approved resolution plan, the entire admitted amount of Rs. 54.46 crores was paid to IDBI Trusteeship Services Limited in accordance with the plan and Rs. 0.52 crores towards interest on delayed payment (Total amount paid Rs. 54.98 crores).

We would like to inform you that we have received the No Due Certificate from IDBI Trusteeship Services Limited on 21st August 2020 confirming the receipt of their dues. Copy of the No Due Certificate is attached.

The extract of Sec.31(1) of the Insolvency and Bankruptcy Code, 2016 and Clause (xviii) of Resolution Plan dated 17.07.2019 submitted by SNJ Distillers Pvt. Ltd. approved by NCLT, Chennai is produced hereunder for your reference.

"Sec.31(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan:"

Clause (xviii) of Resolution Plan submitted by SNJ Distillers Pvt. Ltd. :

"All claims whether contingent or crystallized or disputed or undisputed and whether or not filed with Government authorities in relation to all taxes, levies or other statutory dues including but not limited to Income Tax, Goods and Service tax, Sales Tax, VAT, Water, Electricity, Excise duty, Custom duty, Royalties and Fees, and/ or penalties including but not limited to fines and interest on FEMA/FERA/AML and other compliances and fines which the Corporate Debtor was or may be liable to pay (including with respect to Financial years under Assessments), all deductions and all withholding taxes on any payment, as required under applicable laws and pertaining to the period prior to the date of approval of the Resolution Plan by the Hon'ble Adjudicating Authorities stand irrevocably and unconditionally abated, settled and extinguished."

As per the resolution plan approved by NCLT, a Monitoring Committee was constituted to implement the resolution plan. As part of the implementation of resolution plan and subject to the SEBI (Delisting of Equity Shares) Regulations, 2009, the Company had applied for delisting of its securities on 1st April 2020 and *taken all the necessary steps to delist the shares of the Company. In continuation of that delisting notice was received from Bombay Stock Exchange (BSE) & National Stock Exchange (NSE) on 3rd July 2020.*

In this regard, we once again bring to your notice that having successfully implemented the resolution plan under the provisions of Insolvency & Bankruptcy Code 2016, EDL as a corporate debtor is free from all past liabilities as there is a change in management. Provisions of Sec.32A of IBC are reproduced herein below:

"Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor."

We request you to kindly take note on the above developments and all the liabilities subsisting as on 20th Jan. 2020 will be extinguished as per the terms of the NCLT - approved Resolution Plan."

16. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

17. The issues that arise for consideration in the instant matter are:

Issue No. I	Whether the Noticee is in violation of provisions of Regulation 9, 13(1), 13(4), 50(1), 50(2), 50(3), 52(4), 52(5), 53, 54(1), 54(2), 55, 56, 57(1), 57(2), 58, 60(1) and 60(2) of LODR Regulations

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act.

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

18. Before proceeding with issue on merits, I take note of the reply of the Noticee that pursuant to completion of the corporate insolvency resolution process (CIRP) under provisions of IBC, Hon'ble NCLT, Chennai in its order dated 20.01.2020 approved the resolution plan submitted by SNJ Distillers Private Limited for the Noticee. Noticee further informed that SNJ Distillers Private Limited had submitted their resolution plan on 17.07.2019 amounting to Rs. 475.04 crores for Empee Distilleries Limited which was approved by the Hon'ble NCLT, Chennai on 20th Jan. 2020. In respect of claims of debenture holders, IDBI Trusteeship Services Limited had submitted their claim with IRP for Rs. 56.61 crores including interest. As per the approved resolution plan, the entire admitted amount of Rs. 54.46 crores was paid to IDBI Trusteeship Services Limited in accordance with the plan and Rs. 0.52 crores towards interest on delayed payment (Total amount paid Rs. 54.98 crores).

19. I have perused the No Dues certificate given by IDBI Trusteeship Services Limited to the Noticee. I have also perused the order of Hon'ble NCLT, Chennai approving the resolution plan. I note that pursuant to completion of resolution process, there has been change in management of EDL. In this regard I take note of the provisions of Section 32A of IBC, which state that

"32A.(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency

resolution process shall cease and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not--

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled….."

20. It is also relevant to note provisions of Section 31(1) of IBC which state as follows: *" If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, 1[including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan."*

21. I also rely on ruling of Hon'ble Supreme Court in the matter of Ghanashyam Mishra And Sons Pvt Ltd. vs Edelweiss Asset Reconstruction Company Limited in CA No. 8129 of 2019 dated 13th April 2021, wherein it is held that

"We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief. We therefore hold, that the 2019 amendment is declaratory and clarifactory in nature and therefore retrospective in operation."

"In the foregoing paragraphs, we have held, that 2019 amendment to Section 31 of I&B Code is clarifactory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated."

22. I note that the violations alleged in the SCN pertain to period April 2018 to December 2019 and are prior to order of Hon'ble NCLT of 20.01.2020. The allegations largely pertain to the period when the Noticee was going through the CIRP. I note that proceedings were initiated vide SCN dated 20.05.2021 after the resolution process had been completed. I further note that claims of debenture holders have been paid as part of the resolution process. The purpose of the various disclosures required under the LODR Regulations is to protect the interest of investors which were the debenture holders in this case. I note that the resolution process took place under provisions of IBC wherein claims were invited from debenture holders by the Debenture Trustee and then paid as part of resolution process. Thus, investors were part of the process which began on 01.11.2018 when moratorium was declared. I note that in terms of Section 32A of IBC, upon completion of the resolution process on 20.01.2020 and subsequent change in management, the liability of the Noticee for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease. I also note that in terms of Section 31A of IBC when the resolution plan is approved by

NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated.

23. Considering the aforesaid, the current proceedings against the Noticee cannot be sustained.

24. Since the allegations against the Noticee have not been established, issues II and III do not merit consideration

ORDER

25. In the light of the findings noted hereinabove, the adjudication proceedings initiated against the Noticee vide SCN dated May 20, 2021 are disposed of.

26. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: April 27, 2022	**MANINDER CHEEMA**
PLACE: MUMBAI	**ADJUDICATING OFFICER**