

THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

CP(IB)No.57/BB/17

Under Section 9 of Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF M/s PHOENIX MARKETING

V/s

UNITED BREWERIES LIMITED

Order delivered on: 8TH January, 2018

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

BETWEEN:

M/s Phoenix Marketing,
No. 402, Hemkunt House,
6 Rajinder Palace,
New Delhi-110008. -

PETITIONER / OPERATIONAL CREDITOR

AND

United Breweries Limited,
UB Tower, UB City, 24,
Vittal Mallya Road,
Bengaluru-560001. -

RESPONDENT/CORPORATE DEBTOR

For the Petitioner(s) : 1) Shri Thomas V.Peter, 24/2, Alexendria Street,
Richmond Town, Bengaluru-560025 Counsel for
Petitioner.

2) Shri Ajith Anand Shetty, SA Partners, No.71, 66th
Cross, 5th Block, Rajajinagar, Bengaluru-560010 –
Counsel for Respondent.

Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical)** – Author

ORDER

The Petitioner has filed a Petition dated 18th July 2017 for initiation of Insolvency Resolution Process in respect of the United Breweries Limited, Corporate Debtor Company under section 9 of the Insolvency and Bankruptcy Code, 2016. The Petition is presented in Form 5 along with Affidavit and copy of the DELCREDRE AGREEMENT and (ii) PURE AGENT AGREEMENT entered into with M/s United Breweries Limited on 4th July 2008. The Petitioner has also submitted that, total Principal Amount debt due from Corporate Debtor M/s United Breweries Limited is Rs 7,87,44,444/-

The averments made in the Petition are briefly described hereunder:-

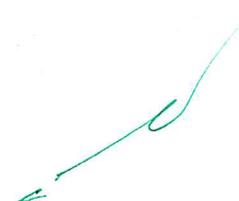
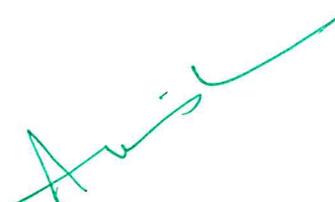
It is averred that, M/s United Breweries Limited, Corporate Debtor/Company during the year April 2008 has approached M/s Phoenix Marketing, Petitioner/ Operational Creditor to assist for sales and distribution of the beer manufactured and / or marketed by them under various brand names and trademarks in the State of Haryana.

It is further averred that, in pursuant to this on 4th July 2008, two agreements were entered into and executed between the parties and titled as (i) DELCREDRE AGREEMENT and (ii) PURE AGENT AGREEMENT which were effective from 18th April 2008 and were valid till 31st March 2010.

It is further averred that, under the said agreements Operational Creditor was required to assist Corporate Debtor in the sales and distribution of the Beer, manufactured and/or marketed by Corporate Debtor under various brand names and trademarks, in the State of Haryana and was to act as its pure agent in other connected and incidental activities.

It is further averred that, in terms of the said agreements Operational Creditor was, inter alia, entitled to receive fixed commission, commission on the basis of number of cases sold and reimbursement of all the operational expenses.

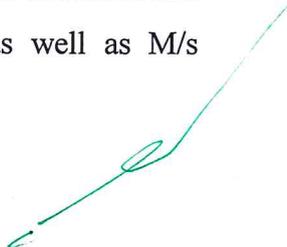
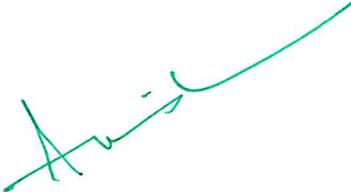
It is further averred that, under the Delcredre Agreement with Corporate Debtor, the Operational Creditor was required to deposit and maintain an amount of Rs 1.50 Crores with Corporate Debtor as a Security Deposit. The said amount was duly deposited by Operational Creditor. In fact, on the specific request of the Corporate Debtor and to show the bonafide and seriousness in the business and keeping in view the harmonious continuing business relationships, the Operational Creditor deposited additional amounts with Corporate Debtor as security deposits.



It is further averred that, simultaneously, Corporate Debtor also requested the Operational Creditor to enter into similar agreements with its associate company/sister concern, namely, M/s Millennium Beer Industries Ltd., and also assist them for sales and distribution of the Beer, manufactured and/or marketed by them under various brand names and trademarks, in the State of Haryana. Accordingly, pursuant thereto, two agreements namely, (i) DELCREDRE AGREEMENT and (ii) PURE AGENT AGREEMENT were executed between M/s Millennium Beer Industries Ltd., and Operational Creditor on 19/02/2009 which were effective from 18/04/2008, and were valid till 31/03/2010. Similarly, Operational Creditor was, inter alia, entitled to receive fixed commission, *and* commission on the basis of number of cases sold and reimbursement of all the operational expenses.

It is further averred that, under the Delcredre Agreement with M/s Millennium Beer Industries Ltd., Operational Creditor was required to deposit and maintain an amount of Rs 50 lakh with Millennium Beer Industries Ltd., and to show the bonafide and seriousness in the business and keeping in view the harmonious continuing business relationships, the Operational Creditor deposited additional amounts with M/s Millennium Beer Industries Ltd., as security deposits.

It is further averred that, after 31/03/2010, the said Agreements with the Corporate Debtor as well as M/s Millennium Beer Industries Ltd., were duly renewed and extended, year after year on the same terms and conditions as contained in the aforesaid agreements dated 4th July 2008, by supplementary agreements dated 01/04/2010, 01/04/2011, 02/04/2012, 01/04/2013 and 01/04/2014. The Agreements and supplementary agreements were executed and signed by Mr. Shekar Ramamurthy on behalf of UBL and as well as M/s Millennium Beer Industries Ltd.,

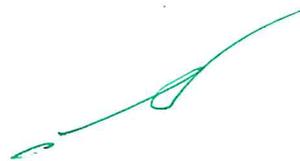
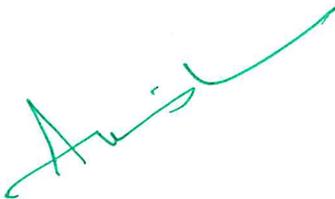


It is further averred that, however during the year 2011, M/s Millennium Beer Industries Ltd., was amalgamated with Corporate Debtor and all the assets and liabilities and all the prior agreements executed by M/s Millennium Beer Industries Ltd., were to continue in force as having been entered into and executed by corporate Debtor on the same terms and conditions.

It is further averred that, during the course of continuous period of business since 2008 Operational Creditor in terms of the agreements was raising various Debit notes towards the fixed commission, commission on the basis of number of cases sold and reimbursement of all the operational expenses. Albeit, there was delay on the part of Corporate Debtor to honour the payment against the said debit notes, however, they were being honoured after deducting the TDS, which was being deposited by the Corporate Debtor with the Income Tax authority against the account of Operational Creditor.

However Corporate Debtor during the year 2012 started making considerable delays in making the payments citing its financial difficulties and losses suffered by its other businesses including the aviation business. That keeping in view the harmonious continuous business relationship and the assurances and representations given by the officers of Corporate Debtor, the Operational Creditor did not precipitate the situation and, without prejudice, accepted the delayed payment.

However during the year 2013, the situation instead of improving became worse and Corporate Debtor initially further delayed the payment and subsequently, completely stopped making the payments under the Debit Notes issued after July 2013. However, the officers of Corporate Debtor requested Operational Creditor to continue discharging its obligations under the agreement and kept on assuring and representing that the payments due against the Debit Notes would be honoured at the earliest and in the meantime Corporate Debtor will continue to deposit the TDS with the Income Tax Authorities against the said Debit Notes.



Once again Operational Creditor keeping in view the long harmonious continuous business relationship and bonafide believing the assurances and representations given by the officers of Corporate Debtor to be true and correct, agreed to continue performing and discharging his obligations under the agreements. Based on the said assurance and representations even the supplementary agreement dated 01/04/2014 was executed between the parties which was effective from 01/04/2014 till 31/03/2015.

However, despite repeated assurance and representations and despite deposit of the TDS with the Income Tax Authorities Corporate Debtor did not honour the payments even against a single Debit Note issued since August 2013.

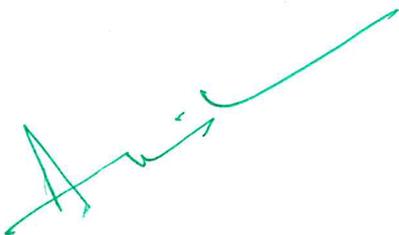
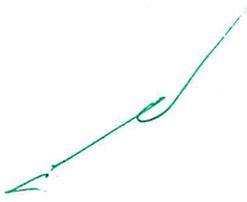
It is submitted that, the Corporate Debtor has not continued with the agreements and has not extended the same. Corporate Debtor is liable to refund/return the security deposit of Rs 5,73,31,505/- to Operational Creditor.

It is further averred that, as on July 2015 total principal amount of debt due from the Corporate Debtor is. 7,87,44,444/- was receivable by the Operational Creditor. Therefore, the Operational Creditor issued the demand notice dated 31/05/2017, under section 8 of the Insolvency & Bankruptcy Code, 2016 to the Corporate Debtor at its registered office for payment of outstanding amount along with interest to the Operational Creditor within 10 days from the date of receipt of the said legal notice. Despite service of the legal notice, the Corporate Debtor has neither replied to the said legal notice nor paid the outstanding amount.

However, the Respondent/ Corporate Debtor submitted the following:

- a) That in fact, the Respondent has already initiated proceedings to recover a sum of Rs 8,57,00,071.99 being the aggregate of the principle sum of Rs 6,74,16,227.44 and interest thereon at 6% per annum from 31st March 2015 till 28th February 2017, amounting to Rs 1,82,83,844.55 and future interest thereon at 8% per annum from the date of the suit till payment or realization of the same and further award costs of the suit, vide O.S No.

2310 of 2017. The Hon'ble City Civil Court at Bangalore, which is seized of the said matter, was pleased to cause notice upon the entity which has filed the present petition and so also its partners. Hence the present petition is liable to be rejected in limine.

- b) As regards contents of paragraph 1, this Respondent denied having approached the Petitioner, seeking assistance for sale and distribution of beer, in the year April 2008 as being false. To the contrary, this Respondent learns from past records that it was the Petitioner herein, who had approached this Respondent with offers to act as a 'del-credre' agent, while proclaiming its reach and spread in the market. That it was only after a competitive bidding, the Petitioner herein was assigned with the contract to distribute beer within a particular region.
 - c) That, contents of paragraph 2 are admitted to be true and contents thereof are to be borne out of records.
 - d) That, contents of paragraph 3 are strictly to be borne out of records.
 - e) That, contents of paragraph 4 are strictly to be borne out of records.
 - f) That, contents of paragraph 5, save and except for claims by the Petitioner of having deposited 'additional amounts' with this Respondent are to be borne out of records. No such 'additional amount' was ever kept in deposit by the Petitioner and deposits, if any, are strictly confined to the contents of contractual documents entered into by the contracting parties.
 - g) As regards contents of paragraph 6 that, the Respondent had requested the Petitioner herein to offer its services/expertise to the erstwhile M/s Millennium Beer Industries Ltd., are hereby denied as being false. As stated supra, it was the Petitioner herein, who had approached the erstwhile M/s Millennium Beer Industries Ltd., with offers to act as a 'del-credre' agent, while proclaiming its reach and spread in the market. That it was only after a competitive bidding, the Petitioner herein was assigned with the contract to distribute beer within a particular region. Averments regarding execution of contractual documents are to be borne out of such documents.
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- h) That, contents of paragraph 7, save and except for claims by the Petitioner of having deposited 'additional amounts' with erstwhile M/s Millennium Beer Industries Ltd., are to be borne out of such documents. No such 'additional amount' was ever kept in deposit by the Petitioner and deposits, if any, are strictly confined to the contents of contractual documents entered into by the contracting parties.
- i) Contents of paragraph 8 are to be borne out of documents referred to therein.
- j) Contents of paragraph 9 are to be borne out of records.
- k) Contents of paragraph 10 are denied in toto.
- l) Contents of paragraph 11 are to be borne out of records.
- m) Contents of paragraph 12 are denied in toto.
- n) Contents of paragraph 13 are denied in toto.
- o) Contents of paragraph 14 are denied in toto.
- p) Contents of paragraph 15 are denied in toto.
- q) Contents of paragraph 16 are denied in toto.
- r) Contents of paragraph 17 are unfounded. The Respondent had no legal obligation to deduct any tax at source, when there was no liability to remunerate the Petitioner in any manner for the period in contention.
- s) Contents of paragraph 18 are denied in toto.
- t) Contents of paragraph 19 are denied in toto.
- u) Contents of paragraph 20 are denied in toto.
- v) Contents of paragraph 21 are denied in toto.
- w) Contents of paragraph 22 are denied in toto.
- x) Contents of paragraph 23 are to be borne out of records.
- y) Contents of paragraph 24 are denied in toto

It is further submitted that, the Respondent is a company/Corporate body registered under provisions of the Companies Act, 1956 (as amended) and is primarily involved in the brewing/manufacture, bottling, marketing and sale of 'beer' and certain other alcoholic beverages. The Respondent is a market leader in its segment and over decades of its existence, has earned considerable good will and patronage of consumers in India and across the globe. The Respondent entity has its presence felt in fifty two (52) countries across the world and is growing by the day. As part of its business expansion, the Respondent entity had acquired controlling stake in M/s Millennium Beer Industries Ltd., which also was into brewing/manufacture of 'beer' and which eventually could not sustain its operations., having been declared as a sick unit, M/s Millennium Beer Industries

Ltd., was referred to the 'Board for Industrial and Financial Reconstruction' (BIFR) and as part of a rehabilitation scheme, the BIFR sanctioned a scheme of acquisition/merger vide its order dated 24th October 2011 passed in Case No. 104/2004 under section 17(2) of the Sick Industrial companies (Special Provisions) Act, 1985, a copy of which is shown as **Document No.1**. Owing to the fact that the erstwhile M/s Millennium Beer Industries Ltd., has since merged with the Respondent, facts narrated in the following paragraphs would refer the Respondent, although it was the erstwhile M/s Millennium Beer Industries Ltd., which was also the contracting party.

It is further submitted that, the Respondent entity, had entered into a 'del credere agreement' and a 'pure agent agreement' commonly dated 4th July 2008, thereby appointing the Petitioner firm as its C & F Agent for the territory of State of Haryana., valid till 31st March 2010. Copies of the said documents are shown as **Documents 2 & 3** respectively. The said agreement was renewed for all financial years till 2014-15. Copies of the renewal letters are shown as **Documents 4,5,6,7 & 8**. It is learnt from records that the Petitioner had also approached the erstwhile M/s Millennium Beer Industries Ltd., and the Petitioner were signatories to a 'Del Credre Agreement' and a 'Pure Agent Agreement' dated 19th February 2009, for the region of State of Haryana and thereafter, similar agreements dated 26th February 2009 for the National Capital Region or NCR i.e., Delhi and surrounding areas, contents whereof had placed absolute responsibility upon the Petitioner to ensure due collection of sale proceeds from the market and to route it to the erstwhile M/s Millennium Beer Industries Ltd., Copies of the aforesaid 'Del Credre Agreement' and a 'Pure Agent Agreement' are produced and shown as **Documents 9, 10,11 & 12** respectively.

It is further submitted that, in pursuance to the merger of the erstwhile M/s Millennium Beer Industries Ltd., with the Respondent entity, the aforesaid arrangements were renewed between the parties vide renewal letter for the year 2010-11 for the State of Haryana and in case of Delhi (NCR), the same were renewed for the years 2010-11 and 2011-12, copies of such renewal letters are

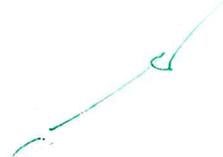
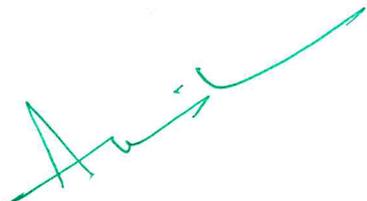
produced and shown as **Documents 13, 14 & 15** respectively. Records available with the Respondent would now reveal that throughout the contract period mentioned supra, the Petitioner had consistently delayed remittance of collections of sale proceeds. In most cases, the Petitioner had delayed such remittances beyond the limit of days, as had been agreed upon between the contracting parties, which in the case of the NCR (Delhi) region was 60 days and in the case of Haryana region, was 180 days.

It is further submitted that, the contractual agreement between the parties mandated the Petitioner to ensure that sale proceeds were collected from the market and routed back to the Respondent within a period of 60 days in the case of the NCR (Delhi) region and 180 days in the case of Haryana region, from the date of sales/supplies. It is also a fact that, it was the Petitioner who had consistently defaulted in operating within such time line. As further mandated under the contracts referred supra, this Respondent was vested with the inherent right to adjust the deposits placed as security by the Petitioner, corresponding to the amounts in default attributable to the Petitioner. Further assertions of the Petitioner having continued its services, solely based on requests or representations made by the Respondents representatives/employees are denied as being figments of the Petitioner's imagination.

It is further submitted that, it would be relevant for the Respondent to refer to Clause-6, common to the contracts referred to in the preceding paragraphs, which is culled out as under;

Clause-6: It shall be the liability of the party to recover the outstanding from the market. The cost of all bad/doubtful debts shall be borne by the party. In case any debt remains outstanding for more than 60 days, the company shall be entitled to deduct such sums from the amount of commission and expenses to be reimbursed.

That as would be apparent from the verbatim of such clause, the market outstanding, which existed thus beyond 60 days was recoverable from the Petitioner. Since repeated verbal demands by the Respondent went unheeded by the Petitioner, the Respondent was constrained to issue a letter of termination on

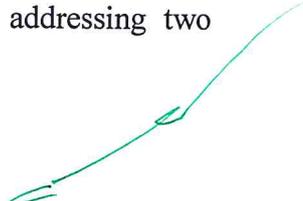
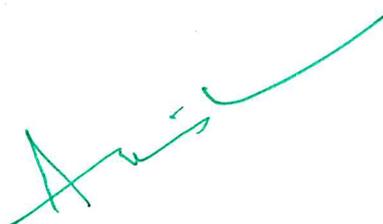


18th March 2014, and as would be apparent from the contents of such letter of termination, repeated defaults by the Petitioner in adhering to its contractual obligations had left the Respondent with no option but to terminate the arrangement.

It is further submitted that, as per duly audited statement of accounts retained by the Respondent, the total market outstanding from Delhi region, as on 31st March 2014, stood at Rs 4,27,81,264/- and as on 31st March 2016, the same had reduced to Rs 2,77,70,654.12. That as per duly audited statement of accounts retained by the Respondent for the Haryana region, as on 31st March 2015, stood at Rs 10,41,22,601/- and as on 31st March 2016, had reduced to Rs 7,59,89,696.47.

It is further submitted that, as on 28th February 2017, the market outstanding from Haryana region has further reduced to Rs. 7,57,22,957.47 and for the Delhi region, the same remains to stand at Rs 2,77,70,654.12. Owing to these facts and in exercise of its powers vested in it as per the aforementioned contract, the Respondent is very much within its rights to retain and adjust the security deposit retained by the Respondent, while reserving liberty to recover the balance sum. The Respondent seeks leave of this Hon'ble Tribunal to produce a copy of the table indicating the supply details viz., retailer details, the amount due thereof and interest accumulated thereon for the regions of Haryana and Delhi as **Documents 16 & 17**. All the relevant invoices would be produced at the relevant point in time owing to the fact that the same would be a voluminous compilation.

It is further submitted that, while things stood thus, the Respondent had continued its talks with this Petitioner, in an attempt to recover the sums due from them. These talks were initiated and continued in the light of the fact that owing to their presence in the region, the Petitioner was quite capable of scuttling the Respondent's operations by various means and a confrontation is the last thing desired by a business entity such as the Respondent itself. However, the Petitioner took this as the Respondent's weakness and instead of complying with their contractual obligations, hit back at the Respondent by addressing two



separate legal notices dated 21st July 2016, putting forth two separate demands for recovery of sums of Rs 7,85,27,889/- and Rs 3,47,92,933/- which according to them were the sums lying in deposit with the Respondent. These notices were individually replied to by the Respondent and it was made abundantly clear that contrary to their demand, it was the Petitioner which was liable to pay moneys to the Respondent on account of the facts and circumstances narrated supra. Copies of the two legal notices dated 21st July 2016 and copies of the Respondent's reply notices dated 17th August 2016 are shown as **Documents 18,19, 20 & 21** respectively. Thereafter, the Petitioner proceeded to cause a similar set of legal notices on 18th and 21st November 2016 under section 272 of the Companies Act, 2013 (Section 434 read with Section 433 of the Companies Act, 1956), which were also replied to by the Respondent vide reply notices dated 5th December 2016. Copies of such notices and replies thereto are shown as **Documents 22,23,24 & 25**.

It is further submitted that, as on 28th February 2017, the Petitioner owed the Respondent, a total sum of Rs. 10,34,93,611.59 of which, the Respondent has already realized a sum of Rs. 3,60,77,384.15 which was deposited with the erstwhile M/s Millennium Beer Industries Ltd., with the Respondent entity as security deposit by the Petitioner. As such, the Respondent is now entitled to recover a sum of Rs 6,74,16,227.44 and interest thereon at the rate of 6% from 31st March 2015 till 28th February 2017 amounting to Rs 8,57,00,071.99 and so also, future interest at the rate of 6% from the date of this suit, till realization.

It is further submitted that, as stated supra, this Respondent has already preferred a civil suit vide O.S No.2310/2017, seeking a Judgement and Decree directing the Petitioner herein to pay this Respondent, a sum of Rs. 8,57,00,071.99, being the aggregate of the principle sum of Rs. 6,74,16,227.44 and interest thereon at the rate of 6% from 31st March 2015 till 28th February 2017 amounting to Rs. 1,82,83,844.55 and future interest thereon at 8% per annum from the date of such suit till payment or realization of the same and further award costs of the suit. The Hon'ble Court has already caused notices

upon the Petitioner entity and its partners and the Respondent would most respectfully pray that, this Hon'ble Tribunal be pleased to reject the petition under reply with compensatory costs in its favour, in the interest of justice and equity.

The Operational Creditor has also submitted the following citation:-

- 1) Civil Appeal No.9405/2017 – Apex Court –
Mobilox Innovations Private Limited Vs Kirusa Software Private Limited.
- 2) Civil Appeal No. 287/1960– Apex Court – Fateh Chand Vs Balkishan Das
- 3) Allora Electric & Cable Co., vs Shiv Charan & Bros. & Ors. [1998(45) DRJ 407]
- 4) Oswal Minerals Vs Mysore Calcides and Chemicals Pvt. Ltd., [1999 SCC Online Kar 597]
- 5) United Decoratives Pvt. Ltd., Vs Dolphin Footwear Pvt. Ltd., [2014(209) DLT 187:2024 (6) AD (Delhi) 26]
- 6) Shyam Dri Power Ltd., Vs Bhav Shakti Steel Mines Private Limited [2012(132) DRJ 129:2013 (177) CompCas 248]
- 7) P.Y Parry Vs Cynotech Buioproducts Pvt. Ltd., & Ors [1999 SCC Online Kar 105]
- 8) Faqir Chand Gulati Vs Uppal Agencies Pvt.Ltd., [2008 10 SCC 345]
- 9) Reliance Industries Ltd. Vs Madan Store Pvt.Ltd., [2007(99) DRJ 420]
- 10) M/s United Breweries Ltd., Vs ITO Ward-6(1) Vishakapatnam, [2015 SCC OnLine ITAT 8664]
- 11) Union of India Vs Raman Iron Foundry [(1974) 2 SCC 231]
- 12) IAE International Aero Engines AG, USA Vs United Breweries {Holding} Ltd., [ILR 2017 Kar 2225]

These case laws are not related to the I & B Code.

However, Respondent has made further submission as follows:

- a) It is submitted that, there is neither an 'admitted liability' nor is there a situation where the Respondent entity is 'unable to pay its genuine dues'. In fact there is a clear dispute as defined under Section 5 (6) of the Insolvency & Bankruptcy Code (IBC).
- b) It is further submitted that, the Petitioner was appointed by this Respondent as its 'Del-Credre' or 'carrying & Forwarding Agents, whose primary role was to collect a pre-designated volume of bottled beer from the Respondent's warehouse or from an 'excise holding' managed by a particular State Excise Department and distributing pre-ordered quantities to varied retailers in a particular region. The C & F agent is also tasked with the responsibility to collect such sale consideration and to route it

back to the Respondent entity, in return for an agreed percentage of commission. The contract governing such arrangement clearly mandates that collection of sale value and depositing the same with the Respondent is a clear and absolute responsibility of such C&F Agent.

- c) It is further submitted that, the Respondent has culled out the relevant provision of the 'del-credre' agreement as under:

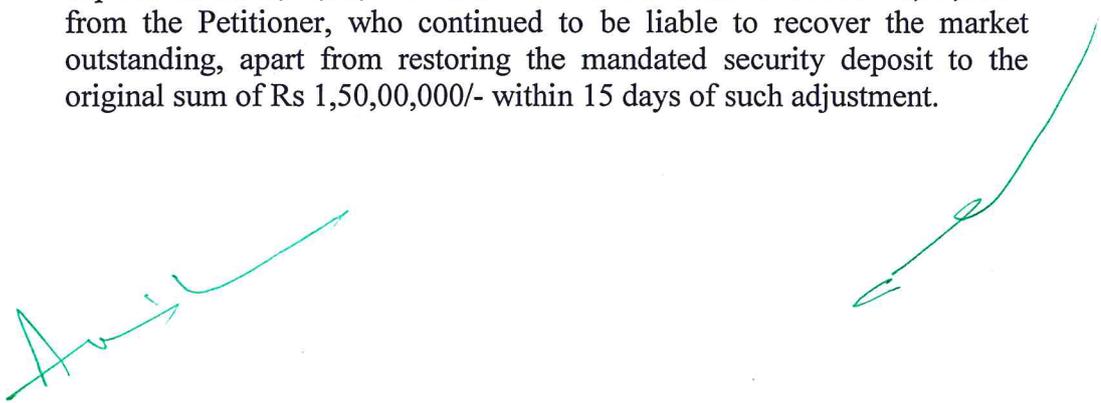
Clause-3: The party(petitioner herein) shall deposit a sum of Rs 1,50,00,000/- with the company (Respondent herein) as Security deposit.

Clause-6: It shall be the liability of the party (petitioner herein) to recover the outstanding from the market. The cost of all bad/doubtful debts shall be borne by the party. In case any debt remains outstanding for more than 180 days, the company(Respondent herein) shall be entitled to deduct such sums from the deposit mentioned in clause (3) above and the party shall within 15 days of such deduction restore the deposit to the original sum of Rs 1,50,00,000/-.

That as would be apparent from the verbatim of such clause, the market outstanding, which existed beyond 180 days was recoverable from the Petitioner.

- d) It is further submitted that, the Petitioner has raised an untenable argument that a limit of Rs 1,50,00,000/- was placed on the recoverable amount as per the 'del-credre' agreement. A bare perusal of the clauses extracted supra, would clearly reveal the fact that apart from holding the Petitioner herein ('del-credre' agent) as being absolutely liable for all market outstanding, it was the responsibility of the Petitioner to ensure that at no point in time, shall the security deposit be less than the mandated sum of Rs 1,50,00,000/-.

Illustration: Suppose the market outstanding was Rs 2,00,00,000/- for more than 180 days, the Respondent was at liberty to adjust the security deposit of Rs 1,50,00,000/- and recover the balance of Rs. 50,00,000/- from the Petitioner, who continued to be liable to recover the market outstanding, apart from restoring the mandated security deposit to the original sum of Rs 1,50,00,000/- within 15 days of such adjustment.



- e) The claim put forth by the Petitioner herein has already been denied as being unfounded. In fact, it is the Petitioner firm, which is liable to pay the Respondent, a total sum of Rs. 6,74,16,227.44 and interest thereon at the rate of 6% from 31st March, 2015 till 28th February 2017 amounting to Rs 8,57,00,071.99 and so also, future interest at the rate of 6% in lieu of which, this Respondent has already filed a Civil Suit vide **O.S No. 2310/2017**. This is the amount which is still recoverable from the Petitioner, who in turn has failed to recover the same from the open market and this amount stands recoverable, after deducting the security deposit and other dues in the form of service charges which was payable to the Petitioner by the Respondent. The said suit was filed on 31st March 2017 i.e., much earlier to the filing of the present petition under reply.

In view of the various submissions made by the Respondent Counsel and particularly **Section 5 of I & B Code**, it is very much clear that, amount as claimed by the Petitioner of **Rs. 7,87,44,444/-** is a disputed amount. As per the submissions made by the Respondent, the petitioner owed an amount of Rs 6,74,16,227.44 and the matter has already been preferred in Civil Suit vide **O.S No. 2310/2017** seeking for a direction to decree to pay the Respondent.

In view of this, the point put forth by the Petitioner is not tenable and considered to be dismissed. Accordingly, petition is dismissed and no order is made as to costs.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI)
MEMBER, JUDICIAL