NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

I.A. NO. 1055 OF 2020

Filed by

Shri Dutt India Pvt. Ltd.

205, P.S. Aviator, New Town Road,
Mouza-Atghora, Chinar Park,
Kolkata – 700 136
Mumbai Address: First Floor, Arcadia,
Nariman Point, Mumbai – 400 021

...Applicant

versus

Office of the Sugar Commissioner,

(Maharashtra State, Sugar Complex,
Shivaji Nagar, Pune – 411 005

...Respondent

In the matter of

C.P. (IB) No. 2956 OF 2018

The Cosmos Co-Operative Bank Limited

...Financial Creditor

versus

New Phaltan Sugar Works Limited

...Corporate Debtor

Order Pronounced on: 21.09.2020

Coram:

Shri. Venkata Subba Rao Hari, Member (Judicial)

Shri. Shyam Babu Gautam (Member Technical)

Appearance:

For the applicant: Mr. Vineet Naik Senior Counsel a/w Kartikeya Desai And Asadali Mazgaonwala i/b Kartikeya and Associates

Mr. Rohit Gupta, Advocate a/w CS Ritesh Mahajan i/b CA Vivek Dabhade, Resolution Professional, Chairman of Monitoring Committee.

For the Respondent: Mr. Dhananjay Doiphode, Regional Joint Director of Sugar (RJD)

Per: Shri. Shyam Babu Gautam, Member (Technical)

ORDER

1. This is an Interlocutory Application filed by Shri. Dutt India Pvt. Ltd. (hereinafter called the "Applicant") against the Office of the Sugar Commissioner, Maharashtra State (hereinafter called as "the respondent"). This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as "the Code"). The applicant herein prays for various directions to be given to the Sugar Commissioner, Maharashtra State, to the Collector/Sub-Divisional Officer/Gram Panchayat/Talathi of Sakharwadi for removing the entry of Government of Maharashtra on the 7/12 extracts of New Phaltan Sugar Works Limited existing on GAT Nos. 62/1, 62/2, 62/3A, 62/4, 62/5A, 62/8A, 65/2, 69, 70, 71/1, 74 (11Gat Nos.)

2. The learned counsel appearing for the applicant mentioned the facts of the case. He initiated with stating about this Company Petition bearing number 2956 of 2018 was filed by one Cosmos Co-Operative Bank (hereinafter called as "the original petitioner") who was the financial creditor of M/s New Phaltan Sugar Works Limited (hereinafter referred to as "the Corporate Debtor"). This petition was filed under Section 7 of the Code and was admitted by this Tribunal vide an order dated 22.02.2019 initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.

3. He further stated that during the course of the CIRP, the applicant herein, in response to the IEM and the Bid Document issued by the Resolution Professional (RP), submitted a Resolution Plan to the Committee of Creditors (CoC) to which the CoC in its 9th meeting voted with 100% voting in favour of the Resolution Plan thus approving it. In this Resolution Plan, the Applicant had proposed to pay an aggregate sum of Rs. 67,61,06,870.10/- in a specified manner therewith. Consequently, M.A. 3271 of 2019 was filed

before this Tribunal under Section 30(6) of the Code and Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking approval of this Resolution Plan.

4. Before the hearing of the said Misc. Application No. 3271 of 2019, multiple proceedings were filed by the erstwhile management of the Corporate Debtor and other Operational Creditors, alleging that the Resolution Plan did not provide adequately for them and/or their claims are not recorded by the Resolution Professional according to the provisions of the Insolvency and Bankruptcy Code, 2016. This Adjudicating Authority dismissed the said Misc. Applications after hearing them at length and with reasons more particularly recorded in the said Orders.

5. In the Resolution Plan, of the entire dues of the farmers were to be paid in a duration of 3 months. The admitted claims of the farmers were Rs. 25,59,49,888/- (Rupees Twenty Five Crores Fifty Nine Lakhs Forty Nine Thousand Eight Hundred and Eighty Eight Only) and the entire amount was proposed to be paid in the following manner:

Sr. No.	**Particulars**	**Amount (Rs.)**
1	Cash Component	10,59,49,888
2	Allotment of Cumulative Preference Shares of the Resolution Applicant	15,00,00,000
	Total	25,59,49,888

Thereafter, upon being directed by this Tribunal, the Applicant by way of their affidavit dated 05.11.2019 revised and/or modified their proposal and agreed to pay a sum of Rs. 25,59,49,888/- (Rupees Twenty Five Crores Fifty Nine Lakhs Forty Nine Thousand Eight Hundred and Eighty Eight Only) in the following manner i.e.

Sr. No.	**Particulars**	**Amount (Rs.)**
1	Cash Component	10,59,49,888
2	Cash Component to be paid within 3 months after the end of year 1.	15,00,00,000

	Total	25,59,49,888

6. The applicant further mentioned that he was then ordered by this Tribunal to furnish a Bank Guarantee in the sum of Rs.5,00,00,000/- in order to secure the amount due and payable to the farmers in the manner mentioned above and the Applicant agreed for the Bank Guarantee to be kept alive and valid till such time the entire amount agreed to be paid towards the farmers' dues were paid. A copy of the said affidavit dated 05.11.2019 and Bank Guarantee dated 05.11.2019 are hereto annexed with the copy of this application and marked as Exhibits "D-1" and "D-2".

7. The counsel further mentioned that during the course of the hearing of the said Misc. Application No. 3271 of 2019, the Farmers were represented for the Farmer's Dues recorded in the Information Memorandum issued by the Resolution Professional which was according to the claims received by the Resolution Professional. This Tribunal, after hearing all the necessary parties to the said Misc. Application No. 3271 of 2019 and upon being satisfied that the Resolution Plan submitted by the Applicant herein complied with the requirements and provisions of the Insolvency and Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, approved the Resolution Plan along with Scheme of Amalgamation vide an Order dated 11.11.2019. This order is annexed and marked as "Exhibit E".

8. To this order dated 11.11.2019 of this Tribunal, there was an Appeal vide M.A. no. 1458/2019 assailed by the aggrieved erstwhile Management before the Hon'ble NCLAT which was dismissed by the Hon'ble NCLAT vide Order dated 19.12.2019. This order was further appealed in the Hon'ble Supreme Court of India in Civil Appeal No. 1603/2020 and was dismissed there vide an order dated 24.02.2020. Thus, the order approving the Resolution Plan was upheld by the Apex Court.

9. The applicant mentioned that during the pendency of the said appeals, they initiated steps to make payment to the financial and

operational creditors including amount due to the farmers. The applicant further mentioned that he has made payments of certain sums of monies and some amount is yet to be paid. The Applicant further stated that the said sum which remains to be due and payable to the farmers is fully secured under a Bank Guarantee dated 05.11.2019 worth a sum of Rs.5,00,00,000/- submitted by the Applicants as per the said Order dated 11th November, 2019 passed by this Tribunal. The Applicants stated that as per the terms and conditions contained in the said Order dated 11.11.2019 passed by this Tribunal, the Applicants were liable to pay the said sum of Rs.25,59,49,888/- towards the farmers' dues within a period of 15 months from the date of the said Order. However, the Applicants have paid more than 85% of the amount due and payable in 6 months and have secured the balance outstanding amount by furnishing a Bank Guarantee. A concise statement of the amount due and payable by the Applicant under the Resolution Plan and the actual amount paid till date by the Applicants in discharge of their obligation under the said Order dated 11.11.2019 is more particularly set out hereinunder:

Sr. No	**Particulars**	**Settlement Amount**	**Paid as on date**
1.	CIRP Cost	Rs. 1,00,00,000	Rs. 1,37,15,873
2.	Employees and Workmen Dues	Rs. 2,00,93,325 Rs.4,40,77,899	Rs. 2,19,50,903 Rs.4,40,77,899
3.	Financial Creditors	Rs.30,92,52,619	Rs. 30,92,52,619
4.	Operational Creditors	Rs. 54,65,628	Rs. 31,89,400
5.	Statutory Dues	Rs. 22,87,902	Rs. 22,87,902
6.	Farmers	Rs. 25,59,49,888	Rs. 20,70,61,088
	TOTAL	Rs. 68,61,06,870	Rs. 61,52,51,557

NOTE: *Actual CIRP cost: Rs. 1,37,15,873/- till the date of approval of Resolution Plan by Adjudicating Authority has been paid by the Applicant.*

- *Rs. 2,19,50,903/- of employees includes salary, their electricity bill and gratuity.*
- *Approximately Rs. 20,70,61,088/- paid to the farmers and Bank Guarantee of Rs. 5,00,00,000 towards performance of farmers dues was kept with the Resolution Professional.*

10. The applicant further stated that the aforesaid fact has been recorded by the Monitoring Committee, made specifically for the purpose of looking into the successful implementation of New Phaltan Sugar Works Limited, in its meeting held on 21.04.2020. A copy of extract of the minutes of the 4th Monitoring Committee Meeting dated 21st April, 2020 is also annexed with the copy of the application and marked as "Exhibit G". It has marked each progress and implementation of the plan. This Committee consists of the Resolution Professional and the Secured Financial Creditors. Copies of the letters and/or receipts issued by the financial and operational creditors acknowledging the amount received by them from the Applicants in full and final satisfaction of their dues are annexed by the applicant and marked as Exhibit "H".

11. The Applicants further stated that much prior to the passing of the said Order dated 11.11.2019, the erstwhile promoters and/or management of New Phaltan Sugar Mills Limited i.e. the Company in liquidation had failed and neglected to pay the farmers dues and on account of the failure on the part of the promoters and/or management of Company in Liquidation the Sugar Commissioner, State of Maharashtra vide it's Order dated 26.04.2018 had issued a Revenue Recovery Certificate (R.R.C.) in the aforesaid sum of Rs. 47,86,98,000/- allegedly due and payable by the Company in Liquidation towards the farmers dues. It is to be noted that the Sugar Commissioner had created charge on Plots bearing GAT No.62/1, 62/2, 62/3A, 62/4, 62/5A, 62/8A, 65/2, 69, 70, 71/1, 74 (11 Gat Nos.) pursuant to the claims that were received by the Farmers' before the initiation of the CIRP against the Corporate Debtor. On account of the issuance of the R.R.C. as aforesaid a charge has been registered in the land revenue records of the

immoveable property of the Company in Liquidation in favour of the State Government. The applicant has annexed a copy of the 7/12 extract evidencing Registration of charge in favour of the State Government at Exhibit "I".

12. The Applicant mentioned that after passing the said Order dated 11.11.2019, it requested the Office of the Sub-Divisional Officer, Phlatan and Collector, Satara to remove and/or delete the charge recorded in the land revenue records in respect of the immovable property which belonged to the Company in Liquidation and which now stands vested and transferred in favour of the successful Resolution Applicant in accordance with and furtherance of their approved Resolution Plan. The Office of the Sub-Divisional Officer Phaltan, through a letter dated 01.06.2020, a copy of which is annexed at Exhibit "J", addressed to the Office of the Collector, Satara after recording the entire facts sought appropriate orders and directions for deletion and/or removal of the charge recorded in the land revenue records in respect of the immoveable property which now stands vested and transferred in favour of the successful Resolution Applicant.

13. The Office of the Collector, Satara upon receipt of the said letter from the Office of the Sub-Divisional Officer Phaltan, vide their letter dated 04.06.2020, which is annexed at Exhibit "K" addressed to the Respondent herein viz, Sugar Commissioner after recording the aforesaid facts and in view of the said Order dated 11.11.2019, called upon the Respondent to set aside and/or quash and/or withdraw the R.R.C. issued so as to enable the Office of the Collector to remove and/or delete the charge recorded in the land revenue records in favour of the Respondent/State Government in respect of the immoveable property which now stands vested and transferred in favour of the successful resolution Applicants.

14. The applicant further showed grief that despite the receipt of the said communication from the office of the Collector, the Respondent for the reasons best known to him has not passed appropriate orders and direction for withdrawal and/or quashing and/or setting aside of the R.R.C. However, it is pertinent to note that in the meantime

the Respondent has vide letter dated 19.11.2019, after an extended hearing and discussion on the Resolution Plan and it's implementation vide the Hon'ble NCLT's order issued its permission for issuance of Sugarcane Crushing Licence for the year 2019-20 in favour of the Applicant, a copy of the which is annexed at Exhibit "L".

15. The Counsel for the applicant further mentioned that on account of the Respondent's failure to pass appropriate orders and directions for withdrawal and/or quashing and/or setting aside of the R.R.C., they vide their separate letters dated 20.03.2020, 25.03.2020 and 5.06.2020 addressed to the Respondent (annexed and marked as Exhibits "M-1" to "M-3" respectively) called upon and requested it to pass appropriate orders and directions. But despite this, the Respondent has not passed any order and/or directions for withdrawal and/or quashing and/or setting aside of the R.R.C.

16. In the circumstances aforesaid, the Applicants stated and submit that said Order dated 11.11.2019 approving the Resolution Plan submitted by it have attained finality being upheld by the Hon'ble NCLAT as also by the Hon'ble Apex Court. Therefore, this Resolution Plan submitted by the Applicants are binding on all persons including Financial and Operational Creditors of the Company in Liquidation. Under the provisions of Insolvency and Bankruptcy Code, 2016 the dues of the Central or State Government, Workmen, Labour, Tax, Excise etc. including farmers' dues fall under the category of Operational Creditors. Also, all the assets, immoveable and moveable, which belonged to and/or owned by the Company in Liquidation now stands transferred and vested in the Applicant free of all encumbrances and charges. Further, all the secured and/or financial creditors in whose favour the immoveable and moveable property of the company in Liquidation had been mortgaged and/or hypothecated have released their security and/or claim on the same in favour of the Applicants. The said Secured and/or Financial Creditors upon receipt of the amount agreed to be paid to them by the Applicants in accordance with the Resolution Plan have released all their rights, claims or lien over the immoveable and moveable property of the Company in Liquidation in favour of the Applicant.

Therefore, the Applicant mentioned that in these circumstances, the Respondent by not passing appropriate Orders and directions for withdrawal and/or quashing and/or setting aside of the R.R.C.is disobeying and/or not adhering and/or complying with the impugned said dated 11.11.2019 and this act on the part of the Respondent in not taking steps for implementation of the impugned Order is per se improper, illegal, unauthorised and contrary to law and because of this, the Applicant herein is facing hindrances in smooth implementation of the Resolution Plan approved by this Tribunal.

17. The purpose and scheme of the CIRP is to handover the Company of the Corporate Debtor to a bona fide new Resolution Applicant. Any threat of attachment of the assets of the Corporate Debtor or subjecting the Corporate Debtor to proceedings by investigating agencies for wrong doing of the previous management will defeat the very purpose and scheme of CIRP, which inter-alia includes resolution of insolvency and revival of the company, and also the efforts of the bank to realize dues from their NPAs would get derailed. Otherwise too, the money realized by way of resolution plan has been recovered by the banks and public financial institutions and other creditors who have lent money to the erstwhile promoters to recover their dues which they have lent to the erstwhile management for creation of moveable or immoveable assets of the corporate debtor in question and therefore, to attach such an asset in the hands of new promoters or resolution applicant ('Applicant') would only negate the very purpose of IBC and eventually destroy the value of assets.

18. The Applicants further stated and submitted that after the Order dated 11.11.2019 being passed, the Applicants in compliance of their obligation have not only paid dues as per the Resolution Plan to the Financial and Operational Creditors but have also incurred huge expenses in restarting, running and operating the Sugar plant which stand transferred and vested in the Applicants. It is pertinent to note that manufacturing of sugar is a seasonal business. The Sugar manufacturing season is for a period of 6/7 months in a year. Usually the season starts from 1st of October and ends in middle of

April every year. In such a scenario, the Applicants after passing of the said Order were first required to repair, refurbish and renovate the plant and machinery of the Corporate Debtor in order to restart and/or commence the production as it was lying closed for almost a period of 2 years. Thus, the Applicants for the season could carry out manufacturing and production activities for a period of 99 days. But in the said period of 99 days the Applicants crushed canes aggregating to 2,60,459 M.Ts. and the total sugar produced was 2,99,424 Quintals. Further, the Applicants have made full payment of farmer FRP (Fair and Remunerative Price) for the current season. at the rate of Rs. 2500 per tonne of cane crushed which amounts to more than Rs. 65,00,00,000/-.

19. The Applicant mentioned the following difficulties faced by it due to the act of the Respondent:

i. The Applicant despite sanction letter issued by Banks and Financial Institution is unable to raise finance from Banks and financial institution against the security of the said immoveable property as the said property in the land revenue records continues to be shown as encumbered and/or charged in favour of the Respondent for non-payment of farmers' dues. A copy of the said letter by the State Bank of India is annexed at Exhibit "N".

ii. In furtherance of the said Order dated 11.11.2019 approving the Applicants' Resolution Plan, the Corporate Debtor/Company in Liquidation stands merged with the Applicant. However, on account of non-withdrawal of the R.R.C., the said property continues to be shown as belonging to the Corporate Debtor which now has become non-existent having merged with the Applicants. Thus, despite the order of merger the assets of the Corporate Debtor are not getting transferred and/or vested in the Applicants.

20. The licenses that were in the name of the Corporate Debtor are not being transferred in the name of the Resolution Applicants because the Revenue records (seven twelve extracts) still reflect the name of the corporate Debtor as the Owner of such assets.

21. In the circumstances aforesaid the Applicants state and submit that in so far as the corporate debtor or its assets are concerned, after

approval of the Resolution Plan by the Adjudicating Authority and the completion of the CIR Process, i.e. a statutory process under the IBC, there cannot be any attachment or confiscation of the assets of the Corporate Debtor by any agency. All pre-existing action initiated and/or are pending against the Corporate Debtor including any encumbrance by way of mortgage, hypothecation, charge, lien and/or any other form of encumbrance stands discharged and/or released. The Applicants further say and submit that the said immoveable property in respect of which the Respondent has issued R.R.C. was prior to the issuance of R.R.C. was mortgaged by the Corporate Debtor in favour of the Banks i.e. the Financial Creditors. Therefore, the claim of the financial creditors in respect of the said property is prior in point of time as compared to that of the Respondent. Further, issuance of R.R.C. only results in creation of a charge on the property and it does not result in transfer and/or creation of interest in the immoveable property in favour of the Respondent. Therefore, the claim and/or right of the Respondent is subservient to that of the Banks and/or Financial Creditors. Applicants having made the payment of the agreed amount to the Banks and/or financial creditors of the Corporate Debtor in accordance with the Resolution Plan, the subsisting mortgage that was created and existing on the said property stood redeemed and the said property stood transferred and vested in the Applicants. The Applicants further say and submit that the claim of the Respondent does not run with the land and gets extinguished upon satisfaction of the prior first charge that was existing in favour of the Banks and/or Financial Creditors. The Applicants further say and submit that even under the provisions of IBC 2016 the claim of Operational creditors including amount due to either the Central and State Government by way of taxes, cess, revenue receipts of any nature or amount due to the employees, workers and labour are all categorised as Operational Creditors. Therefore the claim of the Respondent being in the nature of a revenue receipts is a claim made by the Operational Creditor. Thus, the Respondent cannot claim and/or is entitled to claim a right higher than what is entitled to under the provisions of I.B.C., 2016. It is therefore in the interest of justice, equity and good conscious, that the Respondent viz Sugar Commissioner, Maharashtra State be ordered and directed to forthwith intimate to the Collector/ Sub-Divisional Officer/ Gram Panchayat/ Talati of Sakharwadi to forthwith remove the entry of the Government of Maharashtra on the 7/12 Extracts of New Phaltan Sugar Works Limited for the aforesaid GAT Nos. In the above circumstances, the Applicants most respectfully pray this Tribunal to direct for removal of the attachment over the assets of the Corporate Debtor and to cancel the RRC charge created on the assets of the Applicant on immediate basis.

22. The applicant therefore, by this Application prays for directions to the Sugar Commissioner, Maharastra State to intimate the Collector/Sub-Divisional Officer/Gram Panchayat/Talathi of Sakharwadi to forthwith remove the entry of the Government of Maharashtra on the 7/12 Extracts of New Phaltan Sugar Works Limited existing on GAT Nos. Also, in the alternative, directions by this Tribunal to be issues to Collector/Sub-Divisional Officer/Gram Panchayat/Talathi of Sakharwadi to forthwith remove the entry of the Government of Maharashtra on the 7/12 Extracts of New Phaltan Sugar Works Limited existing on GAT Nos. pursuant to the Order dated 11.11.2019.

23. The Respondent on the other hand has denied all the averments and allegations. He stated that the Corporate Debtor has failed to pay cane payment i.e. FRP (Fair and Remunerative Price) as declared by the Central Government to the farmers who had supplied their sugarcane to the Corporate Debtor during the crushing season 2017-18. As per the provisions of Section (3)(3) of Sugarcane (Control) Order, 1966, the Corporate Debtor has to pay the FRP to cane supplier farmers within 14 days from the date on which the sugarcane was supplied by the farmers, which in this case, the Corporate Debtor has failed to pay within the stipulated time. After receipt of various complaints against them from the farmers regarding non payment of FRP amount, the Respondent has passed two Orders i.e. RRC (Revenue Recoery Certificate) dated 26.04.2018 for an amoun to Rs. 4786.95 Lakhs plus interest and 18.09.2019 for an amount of Rs. 138.82 pluls interest under the provisions of Section 3(8) of Sugarcane (Control) Order 1966 to recover the arrears

of FRP amount along with 15% interest as arrears of land revenue and has authorized Collector Satara for execution of the RRCs.

24. The Respondent further mentioned that the Collector Satara has further authorized Sub Divisional Officer, Phaltan for execution of RRC. In execution process the Sub-Divisional Officer, Phaltan has created charge upon the immovable and other properties of the Corporate Debtor. But due to the appointment of Resolution Professional on Corporate Debtor vide an order dated 20.02.2019 passed by this Tribunal, futher process of sale of properties of the Corporate Debtor could not be carried out. Thereafter, Order dated 11.11.2019 approving the Resolution Plan was passed by this Bench by which all properties of the Corporate Debtor are transferred to the applicant herein. It is to be noted that as per the RRC orders, arrears of FRP to be paid to farmers amounts to Rs. 4925.80 lakhs but the impugned order dated 11.11.2019 has sanctioned only Rs. 2559.50 lakhs as dues of farmers and amount of Rs. 236641.41 lakh is still to be paid to farmers as arrears of FRP which the farmers are demanding and requesting the Respondent.

25. The Respondent further mentioned that the Corporate Debtor has challenged the order before the Hon'ble High Court of Mumbai for implementation of RRC. Both the Appeal as well as Writ Petition are still pending. In view of this pendancy and the remaining amount of FRP arrears of Rs. 2366.41, the Respondent is of the view that this Tribunal has no jurisdiction to entertain the said application as there is an alternative remedy available.

26. Also, the applicant by its letter dated 20.03.2020, 25.03.2020 and 05.06.2020 had requested the Respondent to cancel the RRC and to remove the charge created upon the properties of the Corporate Debtor. Also, the Collector, Satara by its letter dated 04.06.2020 requested the Respondent to take necessary action for withdrawal of RRCs. The Respondent vide its letter dated 30.06.2020, sought legal opinion regarding cancellation of RRCs from the office of Principal Secretary, Law and Judiciary Department, Mantralaya, Mumbai.

27. The Respondent further mentioned that it has adjudicated the claims of sugarcane supplier farmers by passing the orders under Sectoin 3(8) of Sugarcane (Control) Order 196. There is not mention of RRC Order in the Order dated 11.11.2019 passed by this Tribunal. Also, the Collector, Satara which is the RRC executing authority was not made a party to the proceedings before this Tribunal and was not given an opportunity ot represent the details of RRCs and at the stage of execution before CoC. Applicant by its letter dated 25.03.2020 agreed to pay the additional amoun if the NCLAT and/or the Supreme Court of India pass the order to that effect which means the Applicant is principally ready to pay the remaining amount and therefore, directions to be passed to the applicant to pay the FRP arrears in the interest of justice.

FINDINGS

We are of the opinion that the alleged act on the part of Respondent in not withdrawing and/or recalling its order of issuance of R.R.C. is causing enormous harm, loss and injury to the Applicant. The said immoveable property vests and/or stands transferred in favour of the Applicant in furtherance of the said Order dated 11.11.2019 of this Tribunal. The Applicant is deprived of the effective use of the said immoveable property on account of the aforesaid act on the part of the Respondent despite the Applicant having paid the entire amount of consideration. Also, the Applicants' title to the said immoveable shall continue to be defective till such time the said Order of R.R.C. continues to be operative and/or not withdrawn. Further, on account of non-removal and/or continuance of R.R.C. on the immoveable property, prejudice is caused to the Applicant not only in carrying on, running and operating the said sugar plant, payment of wages and salaries to workers and labourers, procurement of sugarcane from the farmers but also implementations and giving effect to the approved Resolution Plan. This non-implementation of the Resolution Plan is also causing great prejudice to the poor farmers and therefore, keeping their interest in view along with the interest of the Corporate Debtor Company and according to the provisions of law, this application needs to be allowed.

In view of the above and with the above observations, this Interlocutory Application bearing number 1055 of 2020 is allowed and the Sugar Commissioner is hereby directed to remove the entry of the government of Maharashtra on the 7/12 extracts of New Phaltan Sugar Works Limited.

We are of the opinion that once the Resolution Plan is approved under Section 31 of the Code, all the assets and benefits of the contracts of the Corporate Debtor stands unconditionally transferred and assigned and vested in the Successful Resolution Applicant free from all encumbrances. Further, all persons including Central and State Government as well as the Local Authorities are bound by the said Order. However, Respondent No. 1 despite being bound by the said Order dated 11.11.2019 did not recall his orders dated 26.04.2018 and 18.09.2019 issuing Revenue Recovery Certificates (RRCs) of the sum of Rs. 4783.98 lakhs and Rs.138.92 lakhs aggregating to Rs. 4925.80 lakhs creating a charge on the immoveable property of the Corporate Debtor in the land revenue records.

The Respondent has mentioned that this Tribunal has no jurisdiction to entertain this application as there is an alternate remedy available. But Section 60(5) of the Code read with Rule 11 of the NCLT Rules, 2016 which deals with the "inherent powers of the NCLT" very well empowers this Tribunal entertain and adjudicate this application as it directly relates to the CIRP of the Corporate Debtor. It is pertinent to note here that under Section 3 of the Sugarcane Control Order, 1966, titled Fair and Remunerative Price of Sugarcane payable by producer of sugar including sub-sections 3(8) & 3(9), provides that the Collector merely acts as an authority to recover from the said producer of sugar in a case where the producer of sugar has defaulted in paying the whole or any part of the price of sugarcane to the growers of sugarcane. The relevant provision is provided herewith:

> ***Section 3. (8):*** *"Where any producer of sugar or his agent has defaulted in furnishing information under Clause 9 of this Order or has defaulted in paying the whole or any part of the price of sugarcane to a grower of sugarcane or a sugarcane growers co-*

operative society within fourteen days from the date of delivery of sugarcane, or where there is an agreement in writing between the parties for payment of price within a specified time and any producer or his agent has defaulted in making payment within the agreed time specified therein, the Central Government or an officer authorized by the Central Government in this behalf or the State Government or an officer authorized by the State Government in this behalf may either on the basis of information made available by the producer of sugar or his agent or on the basis of claims, if any, made to it or him regarding non-payment of prices or arrears thereof by the concerned grower of sugarcane or the sugarcane growers co-operative society as the case may be, or on the basis of such enquiry that it or he deems fit, shall forward to the Collector of the district in which the factory is located, a certificate specifying the amount of price of sugarcane and interest due thereon from the producer of sugar or his agent for its recovery as arrears of the land revenue.

(9). The Collector on receipt of such certificate, shall proceed to recover from such producer of sugar or his agent the amount specified therein as if it were arrears of land revenue."

From the above, it is clear that the Collector has to merely act as an authority to recover the amount specified in the certificate only as an executing authority for the RC issued. These monies are owned neither to the Commissioner of Sugar nor to the State Government but to the farmers. He merely has to act as an agent for the aforesaid recovery.

Also, as far as the confiscation of the properties is concerned, the applicant has immunity under Section 32A which was inserted vide the Insolvency and Bankruptcy Code (Amendment) Act, 2020, from the fraudulent acts committed by the erstwhile promoters of the Corporate Debtor prior to the initiation of CIRP.

It was argued in the matter of **JWS Steel Ltd. v. Mahender Kumar Khandelwal & Ors.** for the CIRP of Bhushan Power & Steel Ltd.

*7. Resolution Plan submitted by the interested Resolution Applicants are duly examined and validated by the Resolution Professional and the Committee of Creditors ("**CoC**"). Once the*

Resolution Plan is voted upon and approved by the CoC, it is submitted to the Ld. Adjudicating Authority for its approval. The Ld. Adjudicating Authority after hearing the objections, if any, and being satisfied that the Resolution Plan is in compliance with the provisions of the law, approves the Plan. The CIR Process is desired to ensure that undesirable persons do not take control of the Corporate Debtor by virtue of Section 29A of the IBC. ***The purpose and scheme of the CIR process is to hand over the company of the corporate debtor to a bona fide new resolution applicant. Any threat of attachment of the assets of the corporate debtor or subjecting the corporate debtor to proceedings by investigating agencies for wrong doing of the previous management will defeat the very purpose and scheme of CIR process, which inter-alia includes resolution of insolvency and revival of the company, and the efforts of the bank to realise dues from their NPAs would get derailed.*** *Otherwise too, the money realised by way of resolution plan is invariably recovered by the banks and public financial institutions and other creditors who have lent money to the erstwhile promoters to recover their dues which they have lent to the erstwhile management for creation of moveable or immoveable assets of the corporate debtor in question and therefore, to attach such an asset in the hands of new promoters or resolution applicant would only negate the very purpose of IBC and eventually destroy the value of assets.*

8) ***In light of the above, it is respectfully submitted that the ED while conducting investigation under PMLA is free to deal with or attach the personal assets of the erstwhile promoters and other accused persons, acquired through crime proceeds and not the assets of the Corporate Debtor which have been financed by creditors and acquired by a bona fide third party Resolution Applicant through the statutory process supervised and approved by the Adjudicating Authority under the IBC. In so far as a Resolution Applicant is concerned, they would not be in wrongful enjoyment of any proceeds of crime after acquisition of the Corporate Debtor and its assets, as a***

***Resolution Applicant would be a bona fide assets acquired through a legal process. Therefore, upon an acquisition under a CIR Process by a Resolution Applicant, the Corporate Debtor and its assets are not derived or obtained through proceeds of crime under the Prevention of Money Laundering Act, 2002 ("PMLA) and need not be subject to attachment by the ED after approval of Resolution Plan by the Adjudicating Authorities**."*

The Court in this matter held the following:

"…7. Taking into consideration the fact that the stand taken by the 'Directorate of Enforcement', is contrary to the stand taken by the Government of India, the order of attachment dated 10th October, 2019 passed by the Deputy Director, 'Directorate of Enforcement' with regard to part property of the 'Corporate Debtor' (Bhushan Power & Steel Limited) is stayed. The Director, Deputy Director and other officers of 'Directorate of Enforcement' are prohibited from attachment of any property of the 'Corporate Debtor' (Bhushan Power and Steel Limited) without prior approval of this Appellate Tribunal. The property already attached by them be released in favour of the 'Resolution Professional' immediately. Further, to ensure that the 'resolution plan' is not given effect before deciding the issue, we stay the impugned order dated 5th September, 2019, so far it relates to the payment of the creditors."

Also, in the matter of **Innoventive v. ICICI Bank**, the Hon'ble Supreme Court of India held that:

" 54. On reading its provisions, the moment initiation of the corporate insolvency resolution process takes place, a moratorium is announced by the adjudicating authority vide Sections 13 and 14 of the Code, by which institution of suits and pending proceedings etc. cannot be proceeded with. This continues until the approval of a resolution plan under Section 31 of the said Code. In the interim, an interim resolution professional is appointed under Section 16 to manage the affairs of corporate debtors under Section 17.

55. It is clear, therefore, that the earlier State law is repugnant to the later Parliamentary enactment as under the said State law, *the State Government may take over the management of the relief undertaking, after which a temporary moratorium in much the same manner as that contained in Sections 13 and 14 of the Code takes place under Section 4 of the Maharashtra Act. There is no doubt that by giving effect to the State law, the aforesaid plan or scheme which may be adopted under the Parliamentary statute will directly be hindered and/or obstructed to that extent in that the management of the relief undertaking, which, if taken over by the State Government, would directly impede or come in the way of the taking over of the management of the corporate body by the interim resolution professional. Also, the moratorium imposed under Section 4 of the Maharashtra Act would directly clash with the moratorium to be issued under Sections 13 and 14 of the Code. It will be noticed that whereas the moratorium imposed under the Maharashtra Act is discretionary and may relate to one or more of the matters contained in Section 4(1), the moratorium imposed under the Code relates to all matters listed in Section 14 and follows as a matter of course. In the present case it is clear, therefore, that unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code. Further, the non-obstante clause contained in Section 4 of the Maharashtra Act cannot possibly be held to apply to the Central enactment, inasmuch as a matter of constitutional law, the later Central enactment being repugnant to the earlier State enactment by virtue of Article 254 (1), would operate to render the Maharashtra Act void vis-à-vis action taken under the later Central enactment. Also, Section 238 of the Code reads as under:*

*"**Sec. 238. Provisions of this Code to override other laws.-***

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited Vnon-obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot *stand in the way of the corporate insolvency resolution process under the Code."*

From the above, it is clear that Section 238 of the Code is an overriding provision and has an overriding effect on all the other laws. The company is already into CIRP and therefore, no question as to the jurisdiction of this Bench to hear and decide this matter arise.

We believe that the amount specified in the certificate has already been paid directly to the farmers in accordance and in furtherance of the Order of this Tribunal approving the Resolution Plan. Therefore, there appears no apparent reason to keep these properties as a charge/encumbrance on the past dues of the Corporate Debtor. This is merely delaying the process of CIRP and causing prejudice to the interests of the farmers.

In view of the above observations, we allow the application bearing No. I.A. 1055 of 2020 and direct 1. the Sugar Commissioner, Maharashtra State, 2. Collector/Sub-Divisional Officer/Gram Panchayat/Talathi of Sakharwadi to remove, within one week from the date of uploading of this order, the entry of Government of Maharashtra on the 7/12 extracts of New Phaltan Sugar Works Limited existing on GAT Nos. 62/1, 62/2, 62/3A, 62/4, 62/5A, 62/8A, 65/2, 69, 70, 71/1, 74 (11Gat Nos.) pursuant to the order dated 11.11.2019 and insert the name of the applicant herein M/s Shri Dutt Indian Private Limited who is the Successful Resolution Applicant.

Accordingly, the above I.A. no. 1055 of 2020 stands disposed of.

Sd/-	Sd/-
SHYAM BABU GAUTAM **Member (Technical)**	**VENKATA SUBBA RAO HARI** **Member (Judicial)**

Date: 21.09.2020

/SNEHA/