

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT - I, MUMBAI BENCH

I.A. No. 1096 of 2020
in
C.P. (IB) 1767/MB/2017

Under Section 60(5) of the I & B Code, 2016

Twentyone Sugars Limited

... Applicant

V/s

1. Office of the Sugar Commissioner
Maharashtra State, Sugar Complex,
Shivaji Nagar, Pune – 411 005
2. Maharashtra State Electricity Distributor
Company Limited
Vidyut Bhavan, O & M Circle, Jintur Road,
Parbhani
3. The Office of District Collector, Parbhani,
Gandhi Park, Parbhani, Maharashtra –
431 401

... Respondents

In the matter of:

Union Bank of India

... Financial Creditor

V/s

Maharashtra Shetkari Sugar Limited

... Corporate Debtor

Order Dated: 22.09.2020

Coram:

Hon'ble Member (Judicial), Janab Mohammed Ajmal

Hon'ble Member (Technical), Shri V. Nallasenapathy

For the Applicant : Senior Counsel Mr. Vineet Naik a/w Mr. Kartikeya
Desai and Mr. Asadali Mazgoanwala i/b.
Kartikeya and Associates

For Respondent No. 1 & 3: None Present

For Respondent No. 2 : Advocate Kiran Gandhi

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. This is an Application by the Successful Resolution Applicant of the Corporate Debtor praying for the following reliefs:
 - i. *The Sugar Commissioner, Maharashtra State be directed to intimate the Collector/Sub-Divisional Officer/Gram Panchayat/Talathi of Parbhani to forthwith remove the entry of the Government of Maharashtra on the 7/12 Extracts of Maharashtra Shetkari Sugar Limited existing on GAT Nos. 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 431, 432, 433, 434, 435, 437, 438, 439, 440, 445 and 446;*
 - ii. *In the alternative, directions be issues to Collector/Sub Divisional Officer/Gram Panchayat /Talathi of Parbhani by the Hon'ble Tribunal to forthwith remove the entry of the Government of Maharashtra on the 7/12 extracts of Maharashtra Shetkari Sugar Limited existing on GAT Nos. pursuant to the order dated November 7, 2019.*
 - iii. *The sum of Rs. 2,12,62,540/- (Rupees Two Crores Twelve Lakhs Sixty-Two Thousands Five Hundred Forty Only) paid to MSEDCL towards the outstanding dues of the factory be returned/refunded and/or adjusted towards the future bill cycles of the Applicant.*

2. The Applicant submits that he is not pressing for the *Prayer No. iii* in view of the fact that some more documents relating to the prayer has to be submitted and accordingly the said prayer is not pressed for the time being with liberty to file separate Application. Accordingly, the Applicant is permitted to give up the prayer with liberty as sought for.
3. The Applicant submits that this Tribunal in C.P. No. 1767/MB/2017 admitted an Insolvency and Bankruptcy Petition filed by Union Bank of Indian against the Corporate Debtor and the same was admitted by an order dated 30.08.2018.
4. It is submitted that this Bench by an order dated 07.11.2019 in MA. No. 3199/2019 approved the Resolution Plan submitted by the Applicant herein. Thus, it is clear that the Corporate Insolvency Resolution Process in respect of the Corporate Debtor was completed on approval of the Resolution Plan as provided under Section 31 of the Code.
5. The Applicant submits that previously the Corporate Debtor failed and neglected to pay Fair Remunerative Price (FRP) to the extent of more than Rs. 10 Crores to the farmers who supplied sugarcane to the erstwhile Corporate Debtor.
6. The Respondent No. 1 (R1) by an order dated 03.06.2015 and 18.05.2016 issued Revenue Recovery Certificate (RRC) against the Corporate Debtor for a sum of Rs. 4,22,70,000/- for the period of 2015-2016 towards outstanding FRP dues of farmers and also created charge on the plots bearing GAT Nos. 406-429, 431-435, 437-440, 445 and 446 belonging to the Corporate Debtor. Consequently, a charge has been noted in the Land Revenue Records by the concerned authority.
7. The R1 filed reply to the Application and submitted that the Corporate Debtor failed to pay the FRP, as declared by the Central Government, to

the farmers who had supplied sugarcane to the Corporate Debtor during the crushing season from 2014-2015 and 2015-2016. On complaints from the farmers regarding the non-payment of FRP amount, RRC dated 03.06.2015 amounting to Rs. 44.78 Crores and dated 18.05.2016 amounting to Rs. 4.23 Crores were issued under provisions of Section 3 (3A) of Sugarcane Control Order, 1966. The Collector of Parbhani has authorised the Sub Divisional Officer, Pathari for the execution of Revenue Recovery Certificate Orders. In the execution process Sub Divisional Officer of Pathari created a charge upon the immovable properties of the Corporate Debtor under the provisions of the Maharashtra Land Revenue Code, 1966 for the RRC amount and started the process of sale of the properties of the Corporate Debtor but due to the appointment of the Resolution Professional of the Corporate Debtor the further process of sale of properties of the Corporate Debtor could not be carried out. However, it is submitted that the Corporate Debtor paid FRP amount of Rs. 44.78 Crores to the farmers. R1 further submits that the farmers are making claim to the R1 claiming arrears of FRP. It is further submitted that the Hon'ble Bombay High Court Bench at Aurangabad directed Regional Joint Director (Sugar), Nanded to pay the said amount as arrears of FRP to the farmers on pro rata basis. It is further submitted that 487 claims were received amounting to Rs.2,63,99,754/- out of the RRC amount of Rs. 4.23 Crores.

8. The applicant submits that the resolution plan as approved by the CoC, which is confirmed by this Tribunal proposed the following payment aggregating to a sum of Rs. 109,40,91,222/-

Sr No	Particulars of Claim	Types of Claim	Admitted Amount (INR)	Settlement Amount Provided under Resolution Plan (INR)
1.	CIRP Costs	—	60,00,000	60,00,000

2.	Financial Creditors	Secured	4,69,47,51,648	90,00,00,000
3.	Interest to Financial Creditors	NA	—	15,99,41,619
4.	Farmers Claim	Unsecured	10,94,71,487	2,00,00,000
5.	Statutory Dues	Unsecured	1,60,79,776	8,03,989
6.	Employees/Workmen	Unsecured	71,33,843	13,67,582
7.	Other Operational Creditors	Unsecured	8,54,00,454	59,78,032
TOTAL			4,91,28,37,208	1,09,40,91,222

9. The above table shows that the Resolution Applicant provided a sum of Rs 2 Crore towards framers claims.
10. The applicant vide letter dated 19.06.2020 addressed to the District Collector Parbhani, Maharashtra intimated about the taking over of the Corporate Debtor i.e. Maharashtra Shetkari Sugar Limited, on the approval of the resolution plan by this Tribunal and requested the Respondent No. 3 (R3) to intimate the Sub Divisional Officer / Commissioner / Talathi of Parbhani, Maharashtra to forthwith remove the entry of the charge created against the Corporate Debtor on 7/12 extract of Maharashtra Shetkari Sugar Limited for the GAT Nos. 406-429, 431-435, 437-440, 445 and 446 (page No. 734).
11. The letter addressed by R1 to R3 dated 19.06.2020 enclosed to the Application is extracted below:

*"OFFICE OF THE REGIONAL JOINT DIRETOR (SUGAR), NANDED
2nd Floor, Bhoovikas Bank Building, Opp. Government Industrial
Training Institute, Nanded 2.*

Date: 19th June, 2020

*(By e-mail)
To,
The District Collector,
Parbhani.*

*Sub: RRC action – information...
Maharashtra Shetkari Sugars Ltd., Uttam Nagar,
Tala. Sonpeth, Dist. Parbhani.*

*Ref: Your e-mail letter OW No.
2020/Mahsul/Sankhyaki/Kavi dated
22.06.2020.*

.....

Vide the Order of the Sugar Commissioner dated 18.05.2016 in respect of recovery of Sugarcane rate arrears of Rs. 422.47 Lakh as per FRP in the Crushing season of 2015-16 of the factory of Maharashtra Shetkari Sugars Ltd., Uttam Nagar, Tal. Sonpeth, Dist, Parbhani, RRC action has been taken and your office has been authorised.

As informed vide the letter under reference in respect of the same, the report is being submitted as under, as per the discussion held in the meeting held in your office on 25.6.2020.

- 1. Vide Order OW No. SC/Kaksha-7/Arth.1/RRC/169/2015 dated 03.06.2015, of the Sugar Commissariat, Order of R.C. was issued in respect of recovery of the Sugar Cane rate arrears of Rs. 4478.10 Lakh, as per FRP in the crushing season of 2015-16 of the factory of Maharashtra Shetkari Sugars Ltd., Uttam Nagar, Tal. Sonpeth, Dist, Parbhani. Thereafter, as per letter OW No. Lep/Maha.Sugar/FRP/14-15/138/2016 dated 29.07.2016 of the Special Auditor, Class 1, Cooperative Societies (SUGAR), Parbhani, the Sugarcane rate arrears of the crushing season of the year 2014-15 has been made as "NIL". However, as per Section 3 (3A) of the Sugarcane Control Order, 1966 the Factory has not paid the interest coming at the prescribed rate, on the bill of the delay period.*
- 2. Vide the order passed thereafter vide OW No. SC/Kaksha-7/Arth-1/RRC/Ha.15-16/2016 dated 18.05.2016 of the Sugar Commissariat, Order of RRC was issued in respect of recovery of the sugarcane rate arrear amount of Rs. 422.47 lakh of the crushing season of the year 2015-16 of the factory of Maharashtra Shetkari Sugars Limited, Uttam Nagar, Tal. Sonpeth, Dist Parbhani. The said amount as well as the interest coming at the prescribed rate on the bill of the delay period, as per Section 3 (3A) of the Sugarcane*

- Control 1966, is pending with the factory of Maharashtra Sugars Limited, Uttam Nagar, Tal. Sonpeth. Dist Parbhani.*
- 3. As per the order dated 06.09.2019 passed in the Bail Application No. 965/2019 filed at the Hon. High Court Division Bench, Aurangabad, in connection with the outstanding amount of the crushing season 2015-16 of the factory of Maharashtra Sugars Limited, Uttam Nagar, Tal. Sonpeth, Dist Parbhani, the amount of Rs. 50.00 lakh (Rupees Fifty Lakh only) has been deposited with this Office. Distribution of the said amount is still pending.*
 - 4. In the meanwhile, as per the Judgment given by the National Company Law Tribunal, Mumbai Bench on 07.11.2019, in matter No. MA 3199/2019 in CP (IB) 1767/MB/2017 of Union Bank of India Vs. Maharashtra Shetkari Sugars Ltd., Twentyone Sugars Limited and Tejas Construction purchased by the Maharashtra Shetkari Sugars Limited and Infrastructure Pvt. Ltd. (Resolution Applicant) has to pay the amount of Rs. 2,00,00,000.00 against the farmers claim as per settlement amount provided under Resolution Plan (INR) as per Point No. 14 of the said order, as per point No. 19, the first instalment of the amount Rs. 1,00,00,000.00 in the month of November 2020 and the second instalment of Rs. 1,00,00,000.00 in the month of November, 2021,*
 - 5. Accordingly, as on today's date, the arrears of the amount of RRC of Rs. 422.47 lakh + interest coming as per the rules of the year 2014-15 and 2015-16 of the factory of Maharashtra Shetkari Sugars Limited, Uttam Nagar, Tal. Sonpeth, Dist. Parbhani, is confirmed.*

Therefore, this facts showing report is being submitted for action as per rules".

12. The *Para 4* of the above letter also recognises that the Resolution Applicant will make a payment of Rs. 2 Crores to the farmers and the amount will be paid in two equal instalments of Rs. 1 Crores each in November, 2020 and November, 2021.

13. We have gone through the valuation report provided by the valuers (Page No. 444 Vol. II of this Application) and found that the attached plots are the property of the Corporate Debtor and were mentioned in the valuation report.

14. It is to be noted that when the resolution plan is approved the resolution applicant takes over all the assets of the Corporate Debtor and is liable to make payment to the Financial Creditors, Operational Creditors etc. as agreed in the resolution plan which has been approved by the CoC and subsequently final seal of approval is given by this Tribunal as provided under Section 31 of the Code. Once that process is over, the resolution applicant cannot be saddled with any kind of new liability apart from the agreed payment to the stakeholders in the Resolution Plan.

15. In view of this, the resolution applicant is deemed to have taken over all the assets of the Corporate Debtor including the above said plots of land on which the R1 created a charge for non-payment of FRP. In the resolution plan, approved by this Bench the Resolution Applicant has agreed to pay sum of Rs. 2 Crores to the farmers over a period of time. Hence, charge created by the R1 on the initiation of Revenue Recovery Proceedings has to be set aside. Accordingly, the charge created over the plots of land cited above is held as *non-est* in law, and the charge created on the above said GAT Nos. are released. The R1 and R3 are directed to release the above said properties from the charge forthwith by advising the revenue authorities concerned.

16. IA 1096/2020 is accordingly disposed of.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Mohammed Ajmal
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
COURT No. – I, MUMBAI BENCH**

*** **

IA No. 1096/MB/2020

in

CP (IB) No. 1767/MB/2017

**Twenty one Sugars Ltd Union Bank of India
V/s
Maharashtra Shetkari Sugar Limited.**

*** **

Dated 22nd September, 2020

ORDER

The work of the Tribunal has been closed due to Covid-19 pandemic as per letter dated 22.03.2020 and subsequent follow up orders of the Principal Bench, National Company Law Tribunal. The Principal Bench vide Order dated 31.07.2020, constituted this Bench for hearing of the urgent matters through Video Conference (VC).

The matter is taken up on VC. Order pronounced vide separate order. IA No.1096 of 2020 is allowed.

**Sd/-
V. NALLASENAPATHY
Member (Technical)**

**Sd/-
MOHAMMED AJMAL
Member (Judicial)**