

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

**IA (IB) No. 249/KB/2020
and
IA (IB) No. 1049/KB/2021
in
CP (IB) No.221/KB/2018**

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

CP (IB) No.221/KB/2018

In the matter of:

Rakesh Pandey, residing at 90 LIC Galim Mohsinpur, Mansoorpur, Akbarpur,
Ambedkar Nagar, Uttar Pradesh - 224122

... Financial Creditor

Versus

JHV Distilleries and Sugar Mills Limited

... Corporate Debtor

IA (IB) No. 249/KB/2020

In the matter of:

Cooperative Cane Development Society Limited

... Applicant

Versus

Shravan Kumar Vishnoi, the liquidator of JHV Distilleries and Sugar Mills Limited

... Respondent

IA (IB) No. 1049/KB/2021

In the matter of:

Shravan Kumar Vishnoi, the liquidator of JHV Distilleries and Sugar Mills Limited

... Applicant

Versus

Punjab National Bank

... Respondent

Date of hearing: 16 June, 2022

Order pronounced on: __ June, 2022

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (via video conferencing/physical hearing):

For the Applicant : Debrup Bhattacharjee, Advocate
For the Liquidator : Mr. Shravan Kumar Vishnoi (liquidator-in-person)
: Ms. Preety Choudhary, _____

COMMON ORDER

(IA (IB) No. 249/KB/2020 and IA (IB) No. 1049/KB/2021)

Rajasekhar V.K., Member (Judicial):

1. Prologue

- 1.1 This court convened *via* hybrid mode.
- 1.2 On 18 June, 2003, JHV Distillery and Sugar Mill Limited (**‘Corporate Debtor’**) was appointed as the promoter of the sick company Cawnpore Sugar Works Limited under the scheme sanctioned by the BIFR. Cawnpore Sugar Works Limited had Padrauna Sugar Mill and as per the sanctioned scheme the Corporate Debtor agreed to pay dues to the farmers who had supplied cane to Padrauna Sugar Mill.
- 1.3 Thereafter, the Corporate Debtor failed to act in terms of the sanctioned scheme and also expressed their inability to act in terms of the said scheme. The BIFR *vide* its order dated 10 July, 2008 cancelled the sanctioned scheme and reappointed IFCI as on Operating Agency.
- 1.4 Being aggrieved by the order of the BIFR, the Corporate Debtor preferred an appeal before the Appellate Authority. However, the Appellate Authority *vide* its order dated 29 June, 2009 dismissed the said appeal with an opportunity to the Corporate Debtor to submit the revival plan again. The Corporate Debtor continued to be in possession the properties of the sick company till 2012.
- 1.5 In the year 2014, a Writ Petition being WRIT (C) No.37182 of 2014 was filed by one of the farmers before the High Court of Judicature at Allahabad, claiming for its dues against the supply of the cane to Cawnpore Sugar

Works Limited. Subsequently, the Hon'ble High Court *vide* its order dated 22 July, 2014 directed the Cane Commissioner to issue recovery certificate and to execute and arrest the occupier of Cawnpore Sugar Works Limited. Accordingly, the Cane Commissioner issued a recovery certificate. Aggrieved by the issuance of Recovery Certificate, the Corporate preferred a Writ Petition before the Hon'ble High Court of Judicature at Allahabad. However the same was dismissed on 29 October, 2014.

- 1.6 This Adjudicating Authority *vide* its order dated 08 May, 2018 admitted the Corporate Debtor into Corporate Insolvency Resolution Process (**'CIRP'**). Further, on receiving no Successful Resolution Applicant, the Corporate Debtor went into liquidation on 12 February, 2019 and Mr. Shravan Kumar Vishnoi was appointed as the liquidator by this Adjudicating Authority.

2. IA (IB) No. 249/KB/2020

- 2.1 This is an application filed by Cooperative Cane Development Society Limited, Padrauna District (**'Applicant'**) against the liquidator of the Corporate Debtor, *inter alia*, praying for the following reliefs;

- (a) Delay in making this application be condoned;
- (b) An order to direct the liquidator of the Corporate Debtor to disclaim the assets and properties of the Padrauna Sugar Mills situated at Padrauna Kushinagar, Uttar Pradesh by setting aside the decision dated 10 January, 2020 taken by the liquidator.

3. *Submission on behalf of the Applicant in IA (IB) No. 249/KB/2020*

- 3.1 Different authorities has held that the properties of Cawnpore Sugar Works Limited or any of its properties belong to the Corporate Debtor and the same cannot be claimed by the liquidator of the Corporate debtor as the property of the Corporate Debtor.
- 3.2 The Corporate Debtor was at no point declared as the owner of Cawnpore Sugar Works Limited and the same cannot form part of the liquidation estate of the Corporate Debtor.

3.3 The Applicant had submitted its claim on October 11, 2019 before the Liquidator stating that Padrauna Sugar Mill does not come with the liquidation estate of the Corporate Debtor in liquidation and accordingly, requested the Liquidator to disclaim the said Padrauna Sugar Mill which actually belongs to the Cawnpore Sugar Works Limited.

3.4 The grounds taken by the liquidator to include Padrauna Sugar Mill which lacks legal basis because the order of the BIFR sanctioning the scheme and appointing the Corporate Debtor as the promoters was cancelled by the BIFR *vide* its order dated 10 July, 2008.

4. IA (IB) No. 1049/KB/2021

4.1 This is an application by Shравan Kumar Vishnoi, Liquidator of the Corporate Debtor (*'Applicant'*) against Punjab National Bank (*'PNB'*), *inter alia*, praying for the following reliefs;

- (a) Declaring the assets of Padrauna Sugar Mill as the liquidation estate of the Corporate Debtor; and
- (b) Distribution of the same amongst the stakeholders in proportion to their claim under Regulation 38 of the IBBI (Liquidation Process) Regulations, 2016.
- (c) Direction on the Respondent to pay CIRP Cost as well the liquidation cost and expenses in full.

5. *Submission on behalf of the Applicant in IA (IB) No. 1049/KB/2021*

5.1 During the CIRP Period the Applicant i.e., the liquidator came across certain auction notices of the Ld. District Magistrate, Kushinagar from where it was seen that one of the Sugar Mill of the Corporate Debtor in Padrauna (referred to as Padrauna Sugar Mill) is in possession of the District Magistrate. On 28 September, 2018 an article regarding the auctioning of the Padrauna Sugar Mill was published by the District Magistrate.

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- 5.2 The Applicant has written several communications to the District Magistrate regarding the handover of the Padrauna Sugar Mill to the Applicant but received no response. The Applicant also filed a Writ Petition before the High Court of Judicature at Allahabad, being Writ Petition (C) No. 2182 of 2019 seeking directions upon the District Magistrate to hand over the assets i.e, Padrauna Sugar Mill to the Applicant. However, the High Court of Judicature at Allahabad dismissed the said Writ Petition and directed the Applicant to approach this Adjudicating Authority.
- 5.3 The Applicant has also filed a contempt petition being CA (IB)1067/KB/2018 against the District Magistrate for violation of the moratorium period under section 14 of the Insolvency and Bankruptcy Code, 2016 (*'Code'*).
- 5.4 Padrauna Sugar Mill does not belong to Cawnpore Sugar Works Limited because as per the scheme approved by the BIFR on 18 June, 2008 the Corporate Debtor was allowed to sell the assets of Cawnpore Sugar Works Limited. Even though the scheme failed there was no order for the handover of Padrauna Sugar Mill to Cawnpore Sugar Works Limited.

Analysis and Findings

6. We have heard the Ld. Counsel appearing in this matter and perused the record. It is pertinent to mention that no reply has been filed by either of the Respondents in both the IA's neither in the e-filing portal or physically. However, be that as it may, the matter in question in both the IA's is that ***whom does Padrauna Sugar Mill belong to? The Corporate Debtor or Cawnpore Sugar Works Limited, the sick company?***
7. From the record available *at page 55 of the IA (IB) No. 249/KB/2020*, it is evident that by virtue of the scheme sanctioned by BIFR on 18 June, 2003¹, IFCI was appointed as the Monitoring Agency for the implementation of the Scheme. The scheme was for revival of the sick company Cawnpore Sugar

¹ Annexure B of the IA (IB) No. 249/KB/2020

Works Limited by JHV Distillery and Sugar Mills Limited (*Corporate Debtor*), a new company floated then by JSL group.

8. However, the BIFR cancelled the sanctioned scheme and reappointed IFCI as on Operating Agency on the ground that JHV Distillery and Sugar Mills Limited (*Corporate Debtor*) even after the expiry of one year from the date of approval of the scheme, has failed to pay 50% of the OTS to the Financial Creditors of the sick company, Cawnpore Sugar Works Limited.² They also failed to achieve their goals as proposed by them under the sanctioned scheme. Further, the promoters of JHV Distillery and Sugar Mills Limited (*Corporate Debtor*) were neither capable of infusing the amount nor to raise funds for restoration of the sick company.³ The order dated 10 July, 2008, also barred JHV Distillery and Sugar Mills Limited (*Corporate Debtor*) from the submission of the other revival proposal as they have failed to implement the approved scheme at the first instance.
9. Upon perusal of the order by the BIFR it is apparent that the sanctioned scheme included *Padrauna Sugar Mill* of the sick company, Cawnpore Sugar Works Limited, but the cancellation of the scheme and appointment of IFCI as Operating Agency on 10 July, 2008, is itself unclouded that the properties of the sick company does not belong to the Corporate Debtor anymore, which were once bestowed on the Corporate Debtor by virtue of the sanctioned scheme. It is also pertinent to mention that such cancellation was not interfered with by the Appellate Authority by its order dated 29.06.2009.
10. As envisaged under section 36⁴ of the Code, a liquidation estate of the Corporate Debtor does not include the assets owned by the third party.

² Page 57, para 3(i) of the IA (IB) No. 249/KB/2020

³ Page 71 - 76 of the IA (IB) No. 249/KB/2020

⁴ **36 – Liquidation Estate** - (1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:—

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in

However, in this instant case, Padrauna Sugar Mill has always been the estate of the sick company, Cawnpore Sugar Works Limited. Further, there is no balance sheet of the Corporate Debtor or an Information Utility or records in the registry or any depository recording securities of the Corporate Debtor, which would evidence the ownership right of the Corporate Debtor on Padrauna Sugar Mill.

11. It is also relevant to mention that we also called for a Report from the District Magistrate of Kushinagar, Uttar Pradesh. From the said report dated 15 April, 2022, it is clear that management of the Padrauna Sugar Mill were given to the Corporate Debtor under the sanctioned scheme of the BIFR dated 18 June, 2003 but due to non-compliance of the terms and conditions of the

the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

(a) assets owned by a third party which are in possession of the corporate debtor, including—

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

(d) assets of any Indian or foreign subsidiary of the corporate debtor; or

(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I

IA (IB) No. 249/KB/2020 and IA (IB) No. 1049/KB/2021
In CP (IB) No.221/KB/2018

scheme, the scheme sanctioned was called off. Further from the report provided by the Tehsildar to the District Magistrate and from other documentary evidences it clearly demonstrates that the ownership of the Padrauna Sugar Mill is with Cawnpore Sugar Works Limited.

12. In light of the above facts and circumstances we are of the view that Padrauna Sugar Mill belong to Cawnpore Sugar Works Limited and does not form the part of the liquidation estate of the Corporate Debtor. Therefore, prayer (a) and (b) of IA (IB) No. 249/KB/2020 are **allowed**.
13. Resultantly, prayers in (a) and (b) of IA (IB) No. 1049/KB/2021 are **rejected**. In so far prayer (c) is concerned, the Respondent, PNB is directed to act in terms of the Code and Regulations framed and to make payment of the outstanding dues.
14. With these directions **IA (IB) No. 249/KB/2020** and **IA (IB) No. 1049/KB/2021** shall stand **disposed of**.
15. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

BALRAJ
JOSHI

Balraj Joshi
Member (Technical)

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BALRAJ JOSHI
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Rajasekhar V
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Rajasekhar V.K.
Member (Judicial)

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Safura A., LRA