

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21/12/2015

C O R A M

The Honourable Mr.Justice S.MANIKUMARC.P.No.102 of 2014

1. The Law Debenture Trust Corporation p.l.c.,
rep. By its Authorised Signatory
having its Registered Office
at 5th Floor
100 Wood Street
London EC2V 7EX
England.
2. Apollo Asia Opportunity Master Fund, L.P
Walker House, Mary Street
George Town
Grand Cayman Islands
rep. By its Autorised Signatoy
Shri Suresh Ganesan.

(Impleaded vide order of the Hon'ble High Court
of Madras dated 24/2/2015 in
C.A.No.912 of 2014 in C.P.No.102 of 2014)
3. Air Maze Limited
P.O.Box 173 Kingston Chambers
Road Town, Tortola
British Virgin Islands
rep. By its Director
Shri Vikram Chachra ... Petitioners

(Impleaded vide order of the Hon'ble High Court
of Madras dated 24/2/2015 in
C.A.No.913 of 2014 in C.P.No.102 of 2014)

Vs

Sakthi Sugars Limited
(A company incorporated under the laws of India
having its Registered Office at
Sakthi Nagar, Bhavani 638 315
Erode District. ... Respondent

Petition filed under section 433 (e), (f) r/w. Section 434 of the Companies Act, 1956 to order winding up of the respondent Company namely Sakthi Sugars Limited in accordance with the provisions of the Companies Act, 1956.

For Petitioners : Mr/s.Anirudh Krishnan

O R D E R

This Company Petition has been preferred under Section 433 (e), (f) r/w. Section 434 of the Companies Act, 1956.

2. On this day, when the matter came up for hearing, learned counsel for the petitioners submitted that the parties have entered into a compromise, registered by a Notary dated 21/11/2015. Compromise Memo entered into between the petitioners and the respondent, duly signed by the parties and their respective learned counsel, is extracted hereunder.

"The petitioner No.2, Petitioner No.3 along with D.E. Shaw Valence International, Inc., having its place of business at Craigmuir ChANGES P.O. Box 71 Road Town, Tortola British Virgin Islands (D.E.Shaw), collectively hold 75% of US\$ 40,000,000 zero coupon

foreign currency convertible bonds due 2011 (the Bonds) issued by the Respondent, of an aggregate face value (Face Value) of USD 11,700,000. Each Bond was redeemable on 31 May 2011 (the Maturity Date) at 148.06% of its Face value (Redemption Price) . The Face value of the Bonds held by Petitioner No.2, Petitioner No.3 and D.E. Shaw (Collectively, the Consenting Bondholders) are set out below and the evidence of their respective holdings of the Bonds are annexed hereto.

BOND HOLDERS	FACE VALUE OF BONDS HELD
Petitioner No.2	US\$ 6,100,000.00
Petitioner No.3	US\$ 2,600,000.00
D.E. Shaw	US\$ 3,00,000.00
Total	US\$11,700,000.00

2. The Respondent has failed to redeem the Bonds held by the Consenting Bondholders on the Maturity Date. As a result, the Consenting Bondholders, instructed the Petitioner No.1 (acting in the capacity as the trustee for the holders of the Bonds) to initiate the present Company Petition and the Company Petition has consequently come to be filed on the mandate of the Consenting Bondholders. The Petitioners and the Respondent have filed several applications in the present Company

Petition, all of which are pending before this court.

3. The Respondent had also proposed a draft scheme under section 391 of Companies Act, 1956 (the Scheme) and the Court had directed a meeting of the equity shareholders and holders of the Bond to be held. In the meanwhile, owing to the objection of the Consenting Bondholders to the Scheme and, based on the representations of the Company and the Consenting Bondholders, the Court vide order dated 8 July, 2015, ordered a postponement of the above mentioned meetings of the holders of the Bonds and the equity shareholders of the Respondent and permitted modification of the Scheme. Pursuant to such order, the Respondent has discussed the terms of a settlement with the Consenting Bondholders.

4. The Respondent and the Consenting Bondholders have come to a consensus on the terms of settlement of the Bonds held by the Consenting Bondholders, as set out in the Consent Memo.

5. As of the date of filing of this Consent Memo, the Respondent is liable to pay the Consenting Bondholders for the Bonds held by them the aggregate of (i) the Redemption Price and the (ii) default interest accruing at a rate of 8.5% per

annum from the Maturity Date up to and but excluding the date on which payment in full of all sums due in respect of the Bonds is made.

6. The Respondent has agreed to settle the claims in respect of the Bonds subject to the terms and conditions set out herein. As part of the settlement, and in supersession of the proposed Scheme and the terms governing the Bonds, the Respondent shall make the following payments:

(a) on or before the date of passing of the consent order by the Court in terms of this Consent Memo (the Consent Order) (such date being the Partial Fee Reimbursement Date), the Respondent shall pay to the Consenting Bondholders (or to their order), a sum of INR 50,000,000 (the Partial Fee Reimbursement Amount) to partially reimburse the Consenting Bondholders for fees, costs and expenses incurred (including all legal fees due to the advisors of the Consenting Bondholders and/or the Trustee in pursuing this Company Petition and the fees and expenses incurred by the Consenting Bondholders, the Petitioner No.1 and its various advisors). The Consenting Bondholders state that they have

incurred fees, costs and expenses significantly in excess of the Partial Fee Reimbursement Amount in seeking to recover the amounts due to them under the Bonds. The payment of the Partial Fee Reimbursement Amount by the Respondent shall be non-refundable; and

(b) on or before 31 March 2016 (unless another date has been agreed in writing between the Respondent and the Consenting Bondholders with the approval of the Court, such date being the Settlement Date), in free and clear funds, directly into the bank account of each of the Consenting Bondholders (or to their order), an aggregate amount of US\$7,605,000.00 (being \$0.65 multiplied by the Face Value of the Bonds held by them) (the Settlement Amount) in the following manner :

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<i>CONSENT ING BONDHOL DERS</i>	<i>FACE VALUE OF BONDS</i>	<i>CONSIDERATION</i>
Petitioner No.2	US\$6,100,000.00	US\$3,965,00.00
Petitioner No.3	US\$2,600,000.00	US\$1,690,000.00
D.E. Shaw	US\$3,00,000.00	US\$1,950,000.00
Total	US\$11,700,000.00	US\$7,605,000.00

7. On and from the date of the Consent Order, the Respondent shall cooperate and assist the Consenting Bondholders to (i) ensure the release of the indemnity granted by the Consenting Bondholders to the Trustee and the Respondent will execute separate release letters, if required in favour of the Trustee, provided that the Respondent shall not be required to undertake any further financial commitment in this regard; and (iii) take such actions as may be necessary and based on written instructions from the Consenting Bondholders for mitigating/reducing costs of holding the Bonds via the current trust structure, provided that the Respondent shall not be required to undertake any further financial commitment in this required.

8. Upon receipt of the Settlement Amount by the Consenting Bondholders in full:

(a) the Consenting Bondholders and the Respondent will have released each other from their respective obligations with respect to the Bonds or any claims in relations thereto and from any liability in respect of or in connection with the present Company Petition;

(b) the Partial Fee Reimbursement Amount shall be deemed to be a full and final settlement by the Respondent for all fees, costs and expenses incurred by the Consenting Bondholders and Trustee, including in pursuing this Company Petition;

(c) The Bonds held by the Consenting Bondholders shall ipso facto stand extinguished and the Consenting Bondholders shall take necessary steps with the Trustee/ relevant depository to mark down/ cancel/ extinguish all of the Bonds held by the Consenting Bondholders and the Respondent shall provide all necessary assistance in this regard to ensure that the Bonds are marked down/ cancelled/ extinguished including providing the requisite

instructions to the depositary;
and

(d) the instruction issued by the Consenting Bondholders to the Trustee to initiate the present Company Petition shall ipso facto stand terminated.

9. In the event the Respondent "

(a) obtains approval from the Reserve Bank of India (RBI) and thereafter fails to pay the Settlement Amount on or before the Settlement Date;

(b) does not obtain RBI approval by 31 March 2016 and fails to deposit the Settlement Amount in an escrow account to be maintained with Citibank N.A. (Mumbai branch) (Escrow Account) by 1 April 2016 in accordance with paragraph 13 below; or

(c) fails to pay the Partial Fee Reimbursement Amount on or before the Partial Fee Reimbursement Date;

the Respondent acknowledges that the present Company Petition shall be automatically admitted against the Respondent. Further, the Petitioners shall be entitled to seek suitable orders for

advertisement from this Court. The Respondent waives all rights to object to the admission and advertisement of the Company Petition. The admission and advertisement of the Company Petition pursuant to this paragraph 9 shall not prejudice any of the rights or remedies available (or which may be available) to the Consenting Bondholders, whether now or in future, under law or in equity, in connection with the full amounts due to the Consenting Bondholders in respect of the Bonds.

10. On the Hon'ble High Court passing a Consent Order pursuant to this Consent Memo, the Respondent shall, within 7 days of obtaining a copy of the order, file an application with the RBI, seeking approval to make payments to the Consenting Bondholders in terms of the Consent Order.

11. The RBI application shall be in a form and substance satisfactory to the Consenting Bondholders. The Respondent shall make best endeavours to obtain the RBI approval and shall diligently follow up with the RBI on

the status of the RBI application. The Respondent shall provide regular updates to the Consenting Bondholders on the status of the RBI application and its discussions with the RBI.

12. In the event that the RBI requires additional time to approve the payment of the Settlement Amount, the Consenting Bondholders and the Respondent acting reasonably may by mutual consent to be recorded in writing and approved by the Court extend the time for securing the RBI approval in which event, the Settlement Date shall stand automatically extended.

13. If,
(a) the RBI application is rejected by the RBI; or
(b) the RBI approval has not been obtained by 31 March 2016;
the Respondent shall on 1 April 2016 deposit the Settlement Amount in the Escrow Account. The Consenting Bondholders and the Respondent agree to mutually discuss and agree upon an alternate manner for making such payments and the Respondent agrees to not unreasonably withhold consent to the

proposals suggested by the Consenting Bondholders. Based on such revised arrangement, this Court shall direct the release of the Settlement Amount from the Escrow Account. The Respondent agrees that the Settlement Amount deposited in the Escrow Account shall be released only pursuant to orders of this Court and the Respondent shall otherwise not be permitted to make any withdrawals from the Escrow Account. Post the deposit of the Settlement Amount in the Escrow Account, the Consenting Bondholders will not be entitled to any further interest or reimbursement of cost or expenses in connection with the Bonds, subject to (i) the Settlement Amount continuing to remain in the Escrow Account free and clear of any encumbrances; and (ii) the Respondent providing all assistance and reasonable cooperation as requested by Consenting Bondholders to help release the cash to them. However, in the event that he Consenting Bondholders and the Respondent have failed to agree

upon an alternate manner for making such payments, on or before the earlier of 30 July 2016 and 3 months following the date on which the Settlement Amount has been deposited into the Escrow Account, then the Consenting Bondholders and the Trustee shall be free to continue to actively pursue any legal proceedings against the Respondent in respect of the Bonds that they may deem fit, provided however, upon the resumption of such legal proceedings against the Respondent, the Respondent shall be permitted to make any withdrawals from the Escrow Account that it may deem fit.

14. The Respondent confirms that other than the RBI approval, it has obtained all necessary approvals including corporate authorisations, lender consents, etc., as may be required and no other approvals or consents are required by the Respondent from any person to enter into, give effect to, and/ or perform all of its obligations as set out in this Consent

Memo.

15. The Scheme submitted by the Respondent being Company Application No. 183 of 2015 shall stand withdrawn in view of the settlement reached with the Consenting Bondholders. The Respondent will notify the stock exchange/SEBI through notice issued within 7 days of passing of Consent Order and also carry out paper publication in this regard, for the information of the equity shareholders of the Respondent. The Respondent agrees that all notices and publications to be issued by the Respondent pursuant to this paragraph 15 shall be agreed in writing by the Consenting Bondholders prior to release by the Respondent.

16. The Consent Memo shall be binding on any subsequent holders of the Bonds which are presently held by the Consenting Bondholders. The Respondent agrees to fulfill its obligations under this Consent Memo towards such subsequent holders of the Bonds.

17. The Respondent acknowledges and agrees that until the transactions contemplated in this Consent Memo have not consummated to the satisfaction of

the Consenting Bondholders, or in the event that any of the terms and conditions specified herein are breached or not complied with, the Consenting Bondholders and the Trustee shall have the right to continue to actively pursue any legal proceedings against the Respondent in respect of the Bonds that they may deem fit and nothing herein shall be construed as having limited or in any manner diminished any of the claims available to the Consenting Bondholders or the Trustee against the Respondent. Notwithstanding anything to the contrary contained herein, and for the avoidance of doubt, the Respondent and the Consenting Bondholders agree that unless both the Partial Fee Reimbursement Amount and the Settlement Amount has been received in full by the Consenting Bondholders by wire transfer of free, clear, and immediately available funds on or before the Settlement date, this Consent Memo shall not prejudice any of the rights or remedies available (or which may be available) to the Consenting Bondholders or the Trustee, whether now or in future, under law, contract, or in equity, in respect of the Bonds,

provided however, except as envisioned under paragraph 13 above, the Consenting Bondholders will not precipitate any action so long as the Respondent complies with this Consent Memo.

The Consenting Bondholders and the Respondent agree to take necessary steps to have the Company Petitioner disposed of in accordance with the terms set out in this Consent Memo. Nothing contained herein shall be construed as prohibiting the Petitioner No.1 from filing a fresh company petition, if instructed by any other holders of the Bonds."

3. Accordingly, Company Petition No.102 of 2014 is closed. Consent Memo, entered into between the parties shall form part of the record. Consequently, the connected Company Application Nos.611 to 619 of 2015 are closed.

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Sd/.S.M.K.J

21.12.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/18.01.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.