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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9001 OF 2015

WITH

WRIT PETITION NO. 6884 OF 2016

Vijay Sugar through its ... Petitioner

Finance Manager

Mr. Raviraj Shankarrao Inamdar Deshmukh

vs.

The State of Maharashtra & Ors. ... Respondents.

WRIT PETITION NO. 6884 OF 2016

WITH

CIVIL APPLICATION NO. 2095 OF 2016

Vijay Sugar ... Petitioner

vs.

The State of Maharashtra and Ors. ... Respondents

WITH

WRIT PETITION NO. 8082 OF 2015

Shri Gajendra Krishna Bobade and Ors. ... Petitioner

vs.

The State of Maharashtra through ... Respondents
the Dept. of Co-operation and Ors.

.....

Mr. Sukand R. Kulkarni for the Petitioner in WP No.9001 of 2015 and WP No.6884 of 2016 and for the Respondent no. 4 in WP No. 8082 of 2015.

Mr. Sarang Satish-Aradhye for the Petitioner in WP No. 8082 of 2015 and for the Respondent nos. 6 and 7 in WP No. 9001 of 2015.

Mr. Manish Pabale, AGP for the Respondent – State.

Mr. R. A. Naik i/b. Mr. Umesh G. Mankapure for the Respondent no. 4 in WP No.9001 of 2015, for the Respondent no. 5 in WP No. 8082 of 2015 and for the applicant in CA No. 2095 of 2016.

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CORAM : A.S. OKA & A.K. MENON, JJ.

DATE : 13th APRIL, 2017

P.C.

1. As far as WP No. 8082 of 2015 is concerned, the learned Counsel appearing for the petitioner therein states that in view of the order dated 28th August, 2015 passed by the Commissioner of Sugar, Maharashtra State, Pune which is the subject matter of challenge in WP No. 9001 of 2015, this petition will not survive. We accept the statement.

2. WP No.9001 of 2015 and WP No. 6884 of 2016 have been preferred by Vijay Sugar, A Division of Shivrtna Udyog Limited. By the order dated 28th August, 2015 passed by the Commissioner of Sugar, the petitioner in these two petitions were directed to pay a sum of Rs.9,23,52,049/- in exercise of powers under clauses 3(3A) and 3(8) of the Sugarcane (Control) Order, 1966. The amount ordered to be paid by the petitioner under the said order is Fair and Remunerative price (FRP) of the Sugarcane supplied to the petitioner by the agriculturists.

3. For the execution of the order dated 28th August, 2015, which is challenged in WP No. 9001 of 2015, the Tahsildar, Pandarpur issued a notice dated 26th May, 2016. The said notice is the subject matter of challenge in WP No.6884 of 2016.

4. Our attention is invited to order dated 22nd February, 2017 passed by the division Bench of this Court. Paragraph 1 to 3 of the said orders reads thus :

1. *The amount determined by the Commissioner of Sugar required to be paid to the agriculturists towards the difference in cane price between the price actually paid and the Fair and Remunerative Price (FRP) is to the extent of Rs.9,23,52,049/-. The petitioners do not dispute the liability in respect of payment of the differential amount as determined by the Commissioner of Sugar towards FRP.*

2. *The Petitioners contend that, considering payment made post decision, the amount payable in terms of Order is to the extent of Rs.5,24,81,003/-. The learned Counsel for the petitioner states that the petitioner-company has tendered an application with the BIFR and the proceedings are registered. However, in view of the repeal of act and enforcement of Insolvency and Bankruptcy Code, there is 180 days window period for referring the matter to National Company Law Tribunal.*

3. *The learned counsel further states that there is a stock of molasses available with the petitioner company and an application is already moved before the Commissioner of Sugar seeking permission to sale the stock. The petitioner needs to secure necessary permission / approval from the Excise Department before sale of molasses. In the circumstances, it would be open for the petitioner to tender an application seeking permission for sale of molasses to the*

Commissioner of Sugar as well as the Excise Department. On receipt of the application, both the authorities shall take appropriate decision favourably permitting the petitioner to sell the molasses within one week from the date of receipt of the application. The petitioner undertakes to deposit the amount received on sale of molasses with Vitthal Sahakari Sakhar Karkhana. The process of sale of molasses shall be completed as expeditiously as possible and preferably within a period of 5 weeks from today and the amount so received on such sale shall be deposited with Vitthal Sakhari Sakhar Karkhana within six weeks from today.

5. Hence, the petitioner in WP Nos. 9001 of 2015 and 6884 of 2016 has not disputed its liability to pay the amount payable under the impugned order dated 28th August, 2015. Paragraph 3 of the aforesaid order directs that the process of sale of molasses shall be completed by the petitioner within a period of 5 weeks from the said date.

6. Today, learned Counsel appearing for the petitioner in the said two petitions has produced a copy of order passed by the Joint Commissioner of State Excise permitting the petitioner to sell quantity of 446.320 MT. Thus process of sale has not been completed within time stipulated under order dated 22nd February, 2017. As stated earlier, petitioner in these petitions WP Nos.9001 of 2015 and 6884 of 2016 has accepted the liability to pay the sum of Rs.9,23,52,049/- .

7. According to the case of the petitioner in the said two petitions, as noted in second paragraph of order dated 22nd February, 2017 certain amounts have been paid by the petitioner in terms of the said order and now the liability is only to the extent of Rs.5,24,81,003/-.

8. After having accepted the liability to pay an amount payable under the said order, indulgence was shown by the Division Bench to the petitioner. Sufficient time has lapsed from 28th August, 2015. Even after accepting the liability, the petitioner - Vijay Sugar has not paid the entire amount. As the liability under the impugned order has been accepted, there is no question of entertaining the Writ Petition challenging the same.

9. By way of last chance, we propose to grant time of only two months to the petitioner to comply with the impugned order.

10. Accordingly, we dispose of the petition by passing the following order :

(a) WP No.9001 of 2015 and WP No. 6884 of 2016 are rejected. Only by way of indulgence, we grant time of two months from today to the petitioner therein to pay entire balance amount in terms of the order dated 28th August, 2015 ;

(b) In view of grant of time of two weeks, we direct that ad-interim relief granted on 2nd June, 2016 in WP No.6884 of 2016 shall continue to operate for a period of two months from today ;

(c) Civil application no. 2095 of 2016 does not survive and same is disposed of ;

(d) WP No. 8082 of 2015 does not survive and the same is disposed of ;

(e) We make it clear that if the petitioner in WP No. 9001 of 2015 and WP No.6884 of 2016 fails to pay the entire balance amount within a period of two months from today, it will be open for the State Government to take all possible steps to recover the said amount from the petitioner in the two Writ Petitions.

(A.K. MENON, J)

(A.S. OKA, J)