IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9820 OF 2018

M/s Ghrushneshwar Sugars Pvt Ltd
having it's registered office at
403, Sentinel, Hiranandani Gardens,
Powai, Mumbai
through Its' Managing Director,
Shri Bhushan Sadashivrao Bhosale,
age: 48 years, occu: business Petitioner

Versus

01 Union of India
through the Ministry of Consumer Affairs,
Food & Public Distribution,
Department of Food & Public
Distribution and also through
The Ministry of Industries,
Department of Industrial Policy & Promotion,
through Joint Secretary,
Department of Law, having his office at
Ayakar Bhavan, Maharashi Marve Marg,
New Marine Lines, Mumbai 400 020

02 The Secretary,
Government of India
Ministry of Consumer Affairs,
Food & Public Distribution,
Department of Food & Public
Distribution and also through the
Ministry of Industries Department
Industrial Policy & Promotion,
through Joint Secretary, Department
of law, having his office at Aaykar
Bhavan, Maharshi Marve Marg,
New Marine Lines, Mumbai 400 020

03 Chief Director (Sugar)
Ministry of Consumer Affairs Food
and Public Distribution, Directorate
of Sugar, Krishi Bhavan, New Delhi

04 The Hon'ble Minister,'
Of Co-operation & Marketing Department,
State of Maharashtra, Mantralaya, Mumbai – 32

05 The Principal Secretary,
The State of Maharashtra,
Department of Cooperation & Marketing
Mantralaya, Mumbai 32

06 The Commissioner of Sugar,
Sakhar Sankool, Shivaji Nagar, Pune

07 The Commissioner of State Excise,
Old Custom House, Mumbai

08 The Supdt. Of State Excise,
Aurangabad at Aurangabad,
Near Government Dairy,
Jalna Road, Aurangabad. Respondents

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Mr. D.B. Thoke, advocate for the petitioner
Mr. A.B. Girase, Govt. Pleader for the State
Mr. S.B. Deshpande, ASG for Union of India

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CORAM : **S. V. GANGAPURWALA**
& ARUN M. DHAVALE, JJ.

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(Date: March 29, 2019)

ORAL JUDGMENT

(Per: S.V.Gangapurwala, J)

1 Heard.

2 Rule. Rule made returnable forthwith. With the consent of learned counsel for respective parties, matter is taken up for hearing.

3 The petitioner seeks following reliefs:-

> *" C) By appropriate writ, order or direction, the Respondent No.05 may kindly be directed to submit the status of the LOI of the petitioner's sugar factory, pursuant*

to the letter dated 01.12.2017 (Exhibit 'P' hereto) issued by the Respondent No.03, within a week.

D) By appropriate writ or direction, the letter dated 30.05.2018 (Exhibit 'u' hereto) issued by the Deputy Secretary of the State of Maharashtra following the orders of the Hon'ble Minister of Cooperation and Marketing of the State of Maharashtra, thereby adding conditions in respect of the payment of the alleged dues of the State Government, may kindly be quashed and set aside.

E) By appropriate writ or direction, it be held and declare that the letter dated 30.05.20118 issued by the Deputy Secretary of the Respondent No.05 following the order passed by the Hon'ble Miniser of Cooperation and marketing Department of the State of Maharashtra is in contravention of the Sugarcane (Control) Order, 1966 and therefore further be declared that same is ex-facie illegal. "

4 The moot issue for consideration in the present writ petition is, whether the dues of the Government/Crown debt can have a precedence over the debts of the secured creditors under the provisions of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI ACT). So also, whether the purchaser of the property (movable or immovable) in the auction, conducted under the provisions of SERFAESI ACT can be made liable to pay the Government dues /crown debts of the erstwhile owner.

5 The factual matrix in nutshell can be culled out as under:-

The secured creditor viz. The Maharashtra State Cooperative Bank Limited, Mumbai, initiated proceedings under the SARFAESI ACT against the assets of the karkhana. Tender notice for sale was issued. Pursuant to the tender notice, the petitioner participated in the tender process and was declared as a successful bidder. The sale certificate was issued in favour of the petitioner in respect of immovable and movable property. The sale certificate in respect of movable and immovable property describes the following list of encumbrances:-

1. The Maharashtra State Co-operative Bank Ltd., Mumbai
2. Ahmednagar D.C.C. Bank Ltd.,
3. Ratnagiri D.C.C. Bank Ltd.,
4. Solapru D.C.C. Bank Ltd.
5. Raigad D.C.C. Bank Ltd.
6. Pandharpur Urban Co-op Bank Ltd.,
7. Janlaxmi Sahakari Bank Ltd., Nasik
8. The Maharashtra Co-op. Development Corporation Ltd., Pune
9. Nasik Zilla Girna Bank Ltd., Nasik.

6 Mr. Thoke, learned counsel for the petitioner submits that the petitioner had purchased the movable and immovable assets of Ghrushneshwar Sahakari Sakhar Karkhana Limited and not the running business. The same was purchased, in an auction conducted by the secured creditors under the provisions of SARFAESI ACT. The Government can neither have its first charge, nor priority claim. The learned Advocate further submits that dues of the Government were also not specified in the tender notice nor the sale certificate. The petitioner being the auction purchaser of the assets is not liable to pay the dues of the

Government.

The learned counsel relied upon the Judgment in the matter of ***Union of India & ors versus SICOM Ltd & Anr (2009 (2) SCC 121)***. So also, the Judgment of Division Bench of this Court in Writ Petition No.2220/2017 dated 1.8.2017.

7 Mr. Girase, learned Government Pleader submits that the sugar factory Ghrushneshwar Sahakari Sakhar Karkhana Limited was under liquidation. The proclamation of the tender / bid for sale of the movable and immovable property of the said sugar factory was published in the news paper having wide circulation. Clause in the tender notice provided that "The bank intends to sell the assets detailed therein on "as is where is, as is what is and whatever there is basis which is without any warranty, guarantee, without any recourse, assurance and undertaking or representation of any kind whatsoever". The clause further states that the AO does not take or assume any responsibility for any shortfall of the movable/immovable assets, for procuring any permission etc. or for any dues, statutory or otherwise of any authority established by law. Such dues, if any, will have to be borne / paid by the purchaser.

8 Referring to the said clause, learned Government Pleader submits that the petitioner had purchased the assets with the knowledge that the dues will have to be paid by the purchaser. The sale certificate also specifically provides that the purchaser has accepted all the encumbrances prevailing thereon on the

property and which may arise in future and agreed to pay the same and as per the tender conditions accepted by the purchaser. As per the sale certificate also, the petitioner is liable to pay Government dues, which are to the tune of Rs.7,494.97 lakhs. It is further contended by the learned Government Pleader that considering the huge amount of the State Government dues, pending with the Sugar factory, the Government took a conscious decision to put a condition of repayment of Government dues in the next twenty years by the petitioner. The respondent No.6 is directed to send recommendations to respondent No.3 to change the name of the petitioner's sugar factory accordingly. The object of issuing such direction is to ensure payment of the Government dues and the subsequent purchaser is liable to pay all the dues of the Government.

9 The factual matrix as culled out above, is not disputed. Upon perusal of the terms and conditions of the tender and the sale certificate, it is abundantly clear that the petitioner has purchased the movable and immovable assets of Ghrushneshwar Sahakari Karkhana Limited. The petitioner has not purchased the running business of the said Karkhana. The Government has claimed payment of following dues from the petitioner:-

	Amount in lakhs
(a) Government share capital	Rs.1333.00
(b) Government Loan	Rs.3466.50
(c) Government's guarantee to the loan disbursed by the	

financial institutions	Rs.2675.76
(d) Government Guarantee fees	Rs.19.71.
Total	Rs.7494.97

10 The dues as referred to is the amount payable by the erstwhile Karkhana. The dues of the Government are neither adjudicated dues nor any recovery certificate is issued. Same cannot, as such, as on date, be dubbed as crown debt.

11 Even if it is assumed that the dues as claimed by the State Government are in the nature of crown debt, the same can not have priority over the claim of secured creditors.

12 The secured creditor will have a precedence over all other claims including crown debts. The sale certificate issued is in respect of crown debts. The Apex Court in the case of ***Union of India & ors versus SICOM Ltd. & Anr (2008 DGLS (SC) 1625)*** held that the statutory provision shall prevail over the crown debt. The said debt is in the nature of debt to be payable to unsecured creditor.

13 The debts of the State, as referred to supra, were never specified, nor were brought to the notice of purchaser at the time of sale of the secured assets. The debts/encumbrances of the erstwhile owner which the auction purchaser would be liable to pay are the known and specified debts and not unknown debts. The clause in the sale certificate reads as under:-

> *" Since we have received full payment for sale of immovable property and as the purchaser has accepted all the encumbrances presently thereon on the property and which may arise in future and agreed to pay the same and as per the Tender Conditions accepted by the Purchaser, the same is handed over to the Purchaser subsequently.*

The Government dues are not specified in the said sale certificate. Moreover, the dues of the Government are not the dues over the secured assets but were the dues against the erstwhile owner. Unless dues are on the assets, the same would not be brought within the ambit and purview of the encumbrances on the property. The clause, as quoted above, making the purchaser liable is in respect of the encumbrances presently prevailing thereon on the property and that may arise in future. The dues of the Government were certainly not the dues on the property. The respondent would have had the right to recover the same, had the petitioner purchased the running business of the erstwhile Karkhana.

14 Considering the case from any angle, the petitioner cannot be held liable to pay the dues of the Government. We hold that the petitioner would not be liable to pay the dues of the Government as claimed by the respondents. The condition put forth by the respondents, directing the payment of the said amount as a condition precedent for issuance of IEM does not withstand and the said condition would be onerous condition.

15 In the light of above, we hold that the respondent is not

entitled to recover its dues as claimed by it and standing against the erstwhile Ghrushneshwar Sahakari Sakhar Karkhana Limited from the petitioner. The respondents shall take decision with regard to the issuance of LOI/IEM expeditiously without insisting for the condition of repayment of the Government dues as claimed by the Government.

16 Rule is made absolute in the above terms.

17 No costs.

(ARUN M. DHAVALE, J.) **(S. V. GANGAPURWALA, J.)**

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