IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CP-89-2002 (O&M), CA-40 & 41 of 2007, CA-334-2017, CA-16-2019 and CA-118 & 119-2022
Date of decision: 02.09.2022

M/S NORTHLAND SUGAR COMPLEX LTD. (IN LIQUIDATION)

..Petitioner

Versus

THE PUNJAB STATE INDUSTRIAL DEV. CORP. & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Angel Sharma, Advocate
with Mr. Prashant Baliyan, Official Liquidator.

Ms. Munisha Gandhi, Sr. Advocate
with Mr. Vikas Gupta, Advocate
Ms. Salina Chalana, Advocate
for PSIDC.

Mr. Aakash Thakur, Advocate
Mr. Suneel Awasthi, Advocate
for respondent No.3 and 4 (in CP-89-2002 & CA-119-2022).

Mr. Sandeep Chopra, DAG, Punjab.

ANIL KSHETARPAL, J(Oral)

1. At present the following issues require adjudication:-

(i). The Official Liquidator claims that PSIDC is not entitled to the principal amount of Rs.3.06 Crores along with interest amounting to Rs.2.32 Crores as the former management of the Company had entered into an agreement with PSIDC acknowledging that the effect that the financial facility will date back from 1993, although the agreement was signed on 30.08.1994.

(ii). The PSIDC submits that there was a decree passed against it for recovery of Rs.8,00,000/- (including interest) on account of sale of various vehicles and moveable property which did not belong to the Company in liquidation and were never a part of the mortgage property. The PSIDC also claims some amount on account of the CCA charges.

(iii). Sh. Aakash Thakur, Advocate, appears for the legal representatives of the former directors and submits that the Official Liquidator is bound by the previous report submitted by the Chartered Accountant even if such reort is wrong and he had no jurisdiction to call for a fresh report.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. In the present case, the Company in liquidation was ordered to be wound up in the year 1997. PSIDC had extended the financial facility to the Company in liquidation. In fact, previously the Sugar Mill was in a Cooperative Sector. Subsequently, PSIDC took over the Sugar Mill and entered into an agreement to sell with the then Management of Company in liquidation on 24.06.1993. Subsequently, some portion of the amount payable by the subsequent management or Company out of the sale price was treated as a loan. The amount sought to be recovered is the arrears of the aforesaid loan amount. By that time, no order of winding up of the Company was passed. Hence, the PSIDC is entitled to recover that amount (i.e. the principal amount along with interest) and objection of the Official Liquidator is overruled.

4. With regard to the second issue, it may be noted that PSIDC had taken over the assets of the Company in liquidation in exercise of powers under Section 29 of the State Financial Corporations Act, 1951. Under the aforesaid provision, the PSIDC can take over the assets of the

Company and not the individual assets. The PSIDC not only took over the moveable property/assets which did not belong to the Company (i.e. the individual assets) but sold the same. The learned counsel claims that the aforesaid amount was deposited with the Official Liquidator. This matter shall be examined in detail subsequently. As regards the CCA Charges, the same relate to the post winding up order, therefore, rejected.

5. As regards the objection of the learned counsel representing the legal representatives of the former management, it may be noted that under the orders of the Company Court, the entire matter has been re-examined from the Chartered Accountant after noticing certain discrepancies in the previous report. The newly appointed Chartered Accountant has discussed in detail the deficiencies and errors in the previous report. The Official Liquidator in Para 9 of CA-119-2022, has explained the reasons recommending acceptance of subsequent report dated 07.05.2022. The reasons given are as under:-

> *"i) About the adjustment made by PSIDC from the sale proceeds of Rs.60.55 cr. which included Rs.45 Cr sale amount plus the interest of Rs.15.50 Cr. taken from the auction purchaser for late payment, and refunded Rs.27.69 after adjustment towards principal amount of loan, interest on loan and payment made as per various court orders. It is pertinent to mention here that the erstwhile Panel Chartered Accountant had objected to the adjustment made by PSIDC in lieu of interest on loan to the tune of Rs.28.89 Cr. (which includes Rs.13.82 Cr. interest after the date of winding up order) on the basis that interest after the date of winding up cannot be allowed and the same objection was taken by the LR's of Ex Director and Shareholder. This objection was without any basis as the PSIDC has already extended the benefit of Rs.15.50 Cr. it had recovered as interest on sale amount from the auction purchaser whereas interest demanding after date of winding up is Rs. 13.82 Cr. This is established from the fact that in case the date of winding up was taken as the cut off date then the amount based on which the whole calculation is being done*

would have been Rs.45 cr. and not Rs.60.55 cr. Therefore, the above objection of the LR's and as considered by the erstwhile panel Chartered Accountant has been rejected in the new claim verification report by the Panel Chartered Accountant giving reasons thereof and the basis has also been discussed as provided above.

ii) The erstwhile panel Chartered Accountant had restricted the claim in lieu of cane arrears to Rs. 10.18 Cr. out of Rs. 15.72 Cr. which was claimed by PSIDC. It will be pertinent to mention here that the panel Chartered Accountant had earlier accepted this claim fully in his report dated 13.05.2016 but later, after the LRs filed their objections, a new report was made dated 23.11.2017 whereby the claim accepted was reduced to Rs. 10.18Cr. which was exactly what LRs had quoted in their objections. The erstwhile panel Chartered Accountant had made a view, which is in sync with the view of LRs of Ex-Directors and Shareholder that since the proof of payment of these funds to the farmers is only substantiated to the tune of Rs. 10.18 Cr. therefore the claim must be restricted to that amount. The above point is totally without basis as the PSIDC has given their proof of debt, whereby they had provided letters dated 24.11.1997 and 18.05.2000 (In CM-126-2015 In CP-89-2002) with the details of Demand Drafts through which this amount was transferred to Deputy Commissioner, Hoshiarpur. It is hereby submitted that details of the payments further to the cane farmers was received from 13 out of 19 districts and rest of the record could not be provided due to various reasons. This office and the new panel Chartered Accountant have accepted the claim at Rs. 15.02 Cr. based on affidavit given by Deputy Commissioner, Hoshiarpur dated 17.01.2015 (In CM-126-2015 In CP-89-2002) whereby he has accepted that Rs. 15.72 Cr. payment has been received from PSIDC and Rs. 15.02 Cr. have been disbursed to the farmers with rest being returned after deducting expenses. Copy of the letter dated 24.11.1997, 18.05.2000, and copy of affidavit dated 17.01.2015 are annexed herewith as Annexure A3, A-4 & A-5 respectively.

iii) The erstwhile Chartered Accountant as per the objections of the LRs had filed his report against the submissions made by PSIDC regarding the interest received on excess amount they had to remit out of the sale proceeds. It has been found that the submissions given by PSIDC are correct and they have given the complete record of investment in the FDRs and the interest received has been taken into consideration while remitting the excess which was verified by the new Panel Chartered Accountant and taken into consideration in his report dated 07.05.2022.

iv) That it will be pertinent to mention here that it has been observed from the records of this office that the erstwhile Panel Chartered Accountant had given various reports dated 22.02.2016, 13.05.2016. 21.03.2017 and 23.11.2017 whereby the stances have been changed repeatedly. The Claims of Income Tax, Excise Department and PSIDC (Cane arrear) examined by the Erstwhile Panel Chartered Accountant in his various reports, is given hereunder:

Sr. No.	**Name of the Claimant**	**Claim filed**	**Claim admitted vide report dated 22.02.2016**	**Claim admitted vide report dated 13.05.2016**	**Claim admitted vide report dated 21.03.2017**	**Claim admitted vide report dated 23.11.2017**
1.	Income Tax	1.26 Cr.	1.26 Cr.	1.26 Cr.	Rejected (Copy of assessment order not furnished)	Rejected (Copy of assessment order not furnished)
2.	Central Excise	0.89 Cr.	0.89 Cr.	0.44 Cr.	0.44 Cr.	0.44 Cr.
3.	State of Punjab through, Punjab State Industrial Development Corporation LTD (for cane grower's claim)	15.72 Cr.	Fully admitted. No bifurcation regarding cane arrears provided	Fully admitted. No bifurcation regarding cane arrears provided	first time bifurcation regarding cane arrears provided and only Rs.10.18 Cr. was accepted	Bifurcation regarding cane arrears provided and only Rs.10.18 Cr. Was accepted

Copy of the erstwhile Panel Chartered Accountant reports dated 22.02.2016, 13.05.2016, 21.03.2017 and 23.11.2017 are annexed herewith as Annexure A-6, A-7, A-8 & A-9 respectively.
v) The erstwhile Panel Chartered Accountant, despite knowing the fact that there will be surplus in the hands of the Official Liquidator, failed to consider the payment of subsequent interest as per rule 179 which has now been considered by the new Panel Chartered Accountant."

6. In view of the aforesaid reasons recorded which need not be repeated, the subsequent report is accepted and the objection of the legal representatives of the former management is rejected. However, the learned counsel representing the legal representatives submits that the previous report was received pursuant to the earlier order passed by the Company

Court. The Company Court in its journey to wind up the affairs of the Company, passes various zimni orders (i.e. the orders of interim nature). Ultimately, the Court has to form an opinion on the basis of material evidence available. Moreover, vide order dated 22.02.2002, passed in CP-89-2002, the Court had restrained the PSIDC from distributing any amount. Hence, the objection is without substance.

7. The Official Liquidator has been pointed out that as on 30.04.2022, he had Rs.21.12 Crores in the account of Company in liquidation which he proposes to distribute in the following manner:-

Particulars of Claimants	***Admitted Claim (Rs.)***	***Interest as per rule 179 (Rs.)***	***Total Payable (Rs.)***
Workmen	*38,06,515.00*	*Interest is already being provided as per the award*	*38,06,515.00*
Assistant Commissioner of Central Excise Division, Phagwara, Punjab	*44,82,412.00*	*43,91,044.48*	*88,73,456.48*
Cane Commissioner, Punjab, Sector-22, Chandigarh	*14,00,000.00*	*13,71,463.01*	*27,71,463.01*
M/s Fairdeal Agencies, Jalandhar City, Punjab	*3,51,184.00*	*3,44,025.62*	*6,95,209.62*
Punjab Khadi Mandal, Jalandhar City, Punjab	*2,25,219.00*	*2,20,628.23*	*4,45,847.23*
BSNL, Hoshiarpur, Punjab	*1,30,650.00*	*1,27,986.89*	*2,58,636.89*
State of Punjab through, Punjab State Industrial	*946,16,537.00*	*1092,69,955.11*	*2038,86,492.11*

Development Corporation LTD (for cane grower's claim)			
Total	*10,50,12,517.00*	*11,57,25,103.34*	*22,07,37,620.34*

8. He submits that the amount available would undergo a change on account of accrued interest and Rs.5.39 Crores for which the objection of the Official Liquidator has been overruled.

9. Keeping in view the aforesaid facts, the Official Liquidator is requested to take steps in accordance with law in distributing the amount.

10. Hence, CP-89-2002, CA-40 & 41 of 2007, CA-334-207 and CA-118 & 119-2022, are disposed of.

CA-16-2019

This is an application under Rule 9 of the Companies (Court) Rules, 1959, for the acceptance of claim in the shape of the fees and the expenses incurred by the applicant during the process of verification of the claim of the various creditors. It may be noted here that the applicant-Firm initially submitted his professional bill on 22.02.2016, of Rs.1,71,000/-. There is no dispute with regard to the aforesaid bill or payment. The applicant has submitted another bill of Rs.1,18,000/- on 01.12.2017. As per reply submitted by the Official Liquidator, the applicant has failed to justify the subsequent bill of Rs.1,18,000/-. No rejoinder to the aforesaid reply has been filed.

With regard to the payment of professional fee of the erstwhile empanelled Chartered Accountant viz: Bhutoria Ganesan & Company, the Official Liquidator in para 9 of the CA-119-2022 had recorded detailed reasons and discrepancies found in the reports submitted by the erstwhile empanelled Chartered Accountant. It has also been observed therein that the erstwhile empanelled Chartered Accountant has repeatedly changed his stance primarily on the basis of objections filed by the Legal Heirs of the Ex-Director and Share Holders of the company (in liquidation) which has eventually resulted in appointment of new empanelled Chartered Accountant for the reconsideration of claims.

For the foregoing reasons, the application is dismissed.

September 02nd, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*