IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2023

DATE OF DECISION : 11.05.2023

CORAM:

THE HON'BLE MR.T.RAJA, THE ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Company Application Nos.626 of 2017, 298 to 300 of 2021 in

Company Petition No.170 of 1995

Comp.A.No.626 of 2017:

The Official Liquidator
High Court, Madras
As the Liquidator of
M/s.Deve Sugars Limited (In Liquidation) .. Applicant

v.

1 The Recovery Officer
Debt Recovery Tribunal
Bangalore, Krishi Bhavan
Hudson Circle, Bangalore

2 State Bank of India
Virtual Business Unit
(e-State Bank of Mysore)
No.2, First Floor, State Bank of Building
Lady Curzon Road, Shivaji Nagar
Bengaluru 560 001

3 M/s Pegasus Assets Reconstruction Pvt. Ltd.
No.55-56, 5th Floor,
Free Press House, Nariman Point
Mumbai 400 021 .. Respondents

Prayer in Comp.A.No.626 of 2017:-

(a) To direct the Recovery Officer, DRT, Bangalore to comply with the directions of the Hon'ble Division Bench, High Court, Madras dated 17.09.2009 in O.S.A.Nos.59 to 63, 76, 77 and 82 of 2009 and M.P.Nos.1 and 2 of 2009 in O.S.A.No.59 of 2009 and M.P.No.2 of 2009 in O.S.A. No.60 of 2009;

(b) To direct R-3 to associate with the Official Liquidator to bring the properties for sale and then to take his portion of outstanding dues on the sale proceeds as per law or otherwise;

(c) To permit the Official Liquidator to engage the services of ITCOT for valuing the assets of the company in liquidation;

(d) To permit the Official Liquidator to conduct the sale through public auction by giving vide publicity in the newspapers as directed by this Hon'ble Court;

(e) To permit the Official Liquidator to meet out the expenses in connection with sale viz., valuation expenses and advertisement charges to cause publication of sale notice from the common pool fund and to recoup the amount incurred immediately from sale of assets on priority basis;

(f) To direct the cost of the application do come out of the funds from the company in liquidation.

For Applicant	::	Mr.B.Dhanaraj for Official Liquidator
For Respondents	::	Mr.E.Omprakash Senior Counsel assisted by Mr.P.Elayarajkumar for

M/s Ramalingam & Associates
for R3

Comp.A.Nos.298 to 300 of 2021:

Tungbhadra Sugar Works Ltd.,
Having its Regd. Office at
Gundecha Enclave, GC-1, C-Wing, Ground Floor
Kherani Road, Sakinaka, Andheri (East)
Mumbai 400 072 Represented by its
Authorised Signatory Mr.P.Manivelan .. Applicant in all the C.As.

v.

1 The Official Liquidator
High Court, Madras
As the Liquidator of
M/s Deve Sugars Ltd. (In Liquidation)
No.29, Rajaji Salai, Chennai 600001

2 The Recovery Officer
Debt Recovery Tribunal
Bangalore, Krishi Bhavan
Hudson Circle, Bangalore

3 State Bank of India
Virtual Business Unit (e-State Bank of Mysore)
Specialized Assets Recovery Branch
No.2, 1st Floor, State Bank of Building
Lady Curzon Road
Shivaji Nagar
Bengaluru 560 001

4 M/s.Pegasus Assets Reconstructions Pvt Ltd
No.55-56, 5th Floor, Free Press House
Nariman Point
Mumbai 400 021

5 M Titanium Apartments Limited
Shreeniwas House
2nd Floor, Hazarimal Somani Marg
Fort, Mumbai MH 400 001 .. Respondents in all the C.As

Prayer in Comp.A.No.298 of 2021:- To direct the 1st Respondent to pay the arrears of rent of the warehouse to the Applicant herein after deducting the security expenses incurred for maintaining the property.

Prayer in Comp.A.No.299 of 2021:- To grant injunction restraining the 1st Respondent from in any manner interfering with the right of enjoyment of the Applicant to the Schedule herein.

Prayer in Comp.A.No.300 of 2021:- To direct the 1st Respondent to handover the possession of the land, building, plant and machinery more fully described in the Schedule herein to the Applicant.

Schedule
(Description of Property as referred to in Form 8 filed with Registrar of Companies by the applicant)

Survey No	***Village***	***Extent (Acre)***
150	Harige Village	17.07
152		21.20
140		
151		
152 part		5.12
155		
138		
157/2		
157/4		
158/2		
156		50.02
141		
130		

Survey No	***Village***	***Extent (Acre)***
154		
139/2		
32	Thoppinghatta Village	20.39
3	Mallichannanahally Village	10.00
191/2	Bhadravati	1.14
TOTAL		**126.14**

For Applicant :: Mr.G.Rajagopalan
Senior Counsel
for Mr.K.Sakthivel

For Respondents :: Mr.B.Dhanaraj for
Official Liquidator for R1
Mr.Omprakash
Senior Counsel assisted by
Mr.P.Elayarajkumar for
M/s Ramalingam & Associates
for R4

ORDER

The Hon'ble Acting Chief Justice

1.1. Company Application No.626 of 2017 in Company Petition No.170 of 1995 has been taken out by the Official Liquidator, as the liquidator of M/s Deve Sugars Limited (in liquidation), seeking the following reliefs:-

> (a) To direct the Recovery Officer, DRT, Bangalore to comply with the directions of the Hon'ble Division Bench, High Court, Madras dated 17.09.2009 in O.S.A.Nos.59 to 63, 76, 77 and 82 of 2009 and M.P.Nos.1 and 2 of 2009 in O.S.A.No.59 of 2009 and

M.P.No.2 of 2009 in O.S.A. No.60 of 2009;

(b) To direct R-3 to associate with the Official Liquidator to bring the properties for sale and then to take his portion of outstanding dues on the sale proceeds as per law or otherwise;

(c) To permit the Official Liquidator to engage the services of ITCOT for valuing the assets of the company in liquidation;

(d) To permit the Official Liquidator to conduct the sale through public auction by giving vide publicity in the newspapers as directed by this Hon'ble Court;

(e) To permit the Official Liquidator to meet out the expenses in connection with sale viz., valuation expenses and advertisement charges to cause publication of sale notice from the common pool fund and to recoup the amount incurred immediately from sale of assets on priority basis;

(f) To direct the cost of the application do come out of the funds from the company in liquidation.

1.2. Similarly, Thungbhadra Sugar Works Limited represented by its Authorised Signatory Mr.P.Manivelan has taken out Company Application Nos.298 to 300 of 2021 in Company Petition No.170 of 1995 seeking to direct the Official Liquidator, the 1st respondent therein to pay the arrears of rent of the warehouse to the applicant after deducting the security expenses incurred for maintaining the property; to grant injunction restraining the 1st respondent from in any manner interfering with the right of enjoyment of the applicant to the Schedule property therein; to direct the 1st respondent to handover the possession of the land, building, plant and machinery more fully described in the Schedule therein to the applicant, respectively.

2. Mr.G.Rajagopalan, learned Senior Counsel appearing for the applicant-Tungbhadra Sugar Works Limited in Company Application Nos.298 to 300 of 2021 argued that the applicant was already impleaded as a party to the proceedings relating to the company in liquidation vide order dated 04.07.2016 passed by the Hon'ble Supreme Court in S.L.P.(C) Nos.29559-29565 of 2009, in which the respondent Bank was also a party. Mr.G.Rajagopalan also stated that the properties in question sought to be brought for sale by the Official Liquidator in Company Application No.626 of 2017 are belonging to and owned by the applicant and not by the company in liquidation, because the said properties were given as collateral security for the loans taken by M/s Deve Sugars Limited from the State Bank of Mysore. But these properties are being brought for sale as if they are the properties of M/s Deve Sugars Limited, the company in liquidation. Although Deve Sugars Limited was ordered to be wound up on 16.04.1999 in Company Petition No.170 of 1995 filed by Tapti Machines Private

Limited, the Official Liquidator took possession of the assets of Tungbhadra Sugar Works Limited, the applicant herein, which were given as collateral security in the capacity of corporate guarantor for the loans taken by Deve Sugars Limited from the State Bank of Mysore situated at Harige village on 28.09.1999. Later on, the State Bank of Mysore also filed Company Application Nos.1251-1253 of 1999 in the then pending Company Petition No.170 of 1995 and through the said applications, the State Bank of Mysore also sought the leave of the Company Court in the High Court of Madras to pursue the recovery proceedings before the Debts Recovery Tribunal, Bangalore. The Company Court also granted leave on 10.03.2000 subject to the condition that no coercive steps are taken against the assets of the company belonging to the applicant, as they were given as collateral security and the Official Liquidator was also impleaded as a party in the proceedings before the Debts Recovery Tribunal. Pursuant to the above development, the Debts Recovery Tribunal, Bangalore also issued the recovery certificate dated 15.05.2002 for recovery of the loan availed by Deve Sugars Limited from the State Bank of Mysore and the State Bank of Mysore also filed Company Application No.1300 of 2003 with a prayer that the Bank be permitted to execute the recovery certificate. But the Registry of the High Court returned the said company application by recording an endorsement that the leave of the Court was not necessary.

3. Pursuant thereto, the Recovery Officer proceeded with the sale of the properties belonging to the applicant, which were given as collateral security, on the premise that the sale proceedings were initiated for recovery of the loans borrowed by Deve Sugars Limited from the State Bank of Mysore. But the Tungbhadra Sugar Works Mazdoor Sangha, the workers' union of Tungbhadra Sugar Works Limited objected to the execution of the recovery certificate by the Recovery Officer and the Official Liquidator, who was also impleaded in the recovery proceedings initiated by the State Bank of Mysore, also filed objections. But the said objections were overruled by the Recovery Officer and the sale was ordered. The workers' union thereafter preferred appeal before the Debts Recovery Tribunal, Bangalore, which was numbered as AOR No.15 of 2006, challenging the order passed by the Recovery Officer dated 12.09.2005 confirming the sale in favour of Anita International, on the ground that the sale of properties belonging to the applicant cannot be sold, as they were given as collateral security for the loan borrowed by Deve Sugars Limited from the State Bank

of Mysore. Arguing further, Mr.G.Rajagopalan submitted that when the base price of Rs.10 crores was fixed, as against the same, Anita International made a bid of Rs.10.25 crores, which was accepted by the Recovery Officer on 01.08.2005 and confirmed on 12.09.2005. Thereafter, when applications were filed by the Official Liquidator and others, they were collectively considered in Company Application Nos.2740-2742 of 2007 and were rejected by a common order dated 03.03.2009 on the ground of availability of alternative remedy under the Recovery of Debts Due to Banks and Financial Institutions Act. Therefore, intra-Court appeals were filed in O.S.A.Nos.59-63,76,77 and 82 of 2009 and the same were allowed by a Division Bench of this Court on 17.09.2009 and the sale confirmed by the Recovery Officer was set aside, on the ground that the Official Liquidator, who was the custodian of the properties, was not consulted while preparing the valuation report of the properties. Again the auction purchaser, M/s Anita International preferred appeal before the Supreme Court in Civil Appeal Nos.6042-6048 of 2011, that were dismissed by the Supreme Court vide order dated 04.07.2016, confirming the order passed by the Division Bench of this Court. It is at this stage, the applicant being a third party filed applications for impleadment. The Hon'ble Supreme Court, considering the fact that the applicant's properties are sought to be dealt with, allowed the impleadment applications. In the impleadment application, the applicant stated (i) that the applicant company was the owner of the properties and the properties belonged to them; (ii) that they were ready to settle the entire dues of the workers, creditors and other statutory dues; (iii) that they were taking necessary actions for revival of the company for the welfare of 947 workmen; (iv) that the applicant would be greatly affected if they were not heard, as the assets are owned by the applicant.

4. Continuing his arguments, Mr.G.Rajagopalan further stated that in the meanwhile, the debts of Tapti Machines Private Limited were later assigned to MTitanium Apartments Private Limited vide a deed of assignment dated 06.01.2012. The said party also filed I.A.Nos.44-50 of 2011 in S.L.P.(C)Nos.29559-29565 of 2009, which became Civil Appeal Nos.6042-6048 of 2011, for impleadment, instead of Tapti Machines Private Limited. The Apex Court also by a common order dated 04.07.2016 allowed the impleadment applications filed by MTitanium Apartments Private Limited. In the said application also, it was conceded that the

properties in question proposed to be sold in the recovery proceedings pending before the Debts Recovery Tribunal, Bangalore are owned by the applicant, but they are being sold for recovery of dues from Deve Sugars Limited; that the applicant was constrained to terminate the agreement dated 15.01.1994 entered into with Deve Sugars Limited for transfer of its assets and liabilities vide a deed of cancellation dated 30.09.1998 and as a result of the cancellation of the agreement, the entire assets and liabilities sought to be transferred to Deve Sugars Limited, were reverted back to the books of the applicant, but the applicant was shown to be a guarantor of Deve Sugars Limited in the books of State Bank of Mysore. The learned Senior Counsel further submitted that the said agreement dated 15.01.1994 was not even registered. Again no order of amalgamation or merger was passed in any Court and this was only an internal arrangement, therefore, there was no transfer of properties among the companies. Moreover, the manufacturing license, details of provident fund, sales tax, central excise and other statutory licenses were in the name of the applicant and these facts were also confirmed by the Deputy Commissioner of Commercial Taxes, Government of Karnataka vide order dated 30.01.2014. Finally, Mr.G.Rajagopalan argued that Tungbhadra Sugar Works Mazdoor Sangha also issued no dues certificate dated 17.11.2021 relating to the pending dues payable to the workers and had also given consent for withdrawal of the pending claims made by them against the applicant. Secondly, the applicant made one time settlement with the secured creditor, namely, Pegasus Assets Reconstruction Private Limited. Thirdly, the State Bank of Mysore had also assigned the debt of Deve Sugars Limited to Pegasus Assets Reconstruction Private Limited vide assignment deed dated 18.09.2012. Fourthly, the applicant, as a corporate guarantor of the loan availed by Deve Sugars Limited, has settled the dues for a sum of Rs.42.55 crores including interest and has obtained the no dues certificate dated 20.10.2021. Fifthly, Pegasus Assets Reconstruction Private Limited has also issued a letter addressed to the Sub Registrar Office, Shimoga for lifting of the lien created on the lands in question for the loans taken from State Bank of Mysore. Sixthly, Pegasus Assets Reconstruction Private Limited has also issued a letter dated 20.10.2021 for handing over all the title deeds pertaining to the lands in question to the applicant Tungbhadra Sugar Works Limited, as a result the charge against the properties is completely lifted and the possession of the land including the plant and machinery ought to be given back to the applicant. On this basis, the learned Senior Counsel sought for allowing the three applications as prayed for.

5. Mr.Omprakash, learned Senior Counsel appearing for the respondent Pegasus Assets Reconstruction Private Limited, agreeing with the submissions made by Mr.G.Rajagopalan, learned Senior Counsel appearing for the applicant, stated that the dues payable to the Pegasus Assets Reconstruction Private Limited had been settled and on receipt of the entire dues, the Pegasus Assets Reconstruction Private Limited has also issued the no dues certificate dated 20.12.2021certifying that the borrower and guarantor did not owe them any further dues in respect of the credit facilities availed on behalf of Deve Sugars Limited in favour of Pegasus Assets Reconstruction Private Limited and that the title deeds and all other documents attached with the sanction letter dated 18.07.2019 have been returned to the applicant Tungbhadra Sugar Works Limited.

6. The affidavit filed by the Authorised Signatory of the respondent party-MTitanium Apartments Private Limited also shows that Tapti Machines Private Limited has filed Company Petition No.35 of 1997 for

winding up of Deve Sugars Limited and by a common order dated 16.04.1999 passed by the Company Court in C.P.Nos.170 of 1995 & 35 of 1997, Deve Sugars Limited was wound up. Pursuant thereto, MTitanium Apartments Private Limited has been assigned with the debts of Tapti Machines Private Limited vide the deed of assignment dated 06.01.2012. It is also stated that the Hon'ble Supreme Court vide the common order dated 04.07.2016 allowed the impleadment application filed by MTitanium Apartments Private Limited in I.A.Nos.44-50 of 2011 in C.A.Nos.6042-6048 of 2011, in the place of Tapti Machines Private Limited. It is further stated that the applicant Tungbhadra Sugar Works Limited and the company in liquidation viz., Deve Sugars Limited are two different entities, therefore, MTitanium Apartments Private Limited did not make any claim against the applicant on the basis that it is a different entity. Moreover, the liabilities pending also have been settled outside the Court and they have no dues to be received from the company in liquidation. Lastly, it is also stated that they have no objection for handing over the possession of the properties to the applicant by the Official Liquidator, as they are the title owner of the properties mortgaged as collateral security to the State Bank of Mysore.

7. Mr.B.Dhanaraj, learned counsel representing the Official Liquidator, in support of the reliefs sought for in Company Application No.626 of 2017, opposing the prayers sought for by the applicant in Company Application Nos.298 to 300 of 2021, relying upon the status report, argued that by an order dated 16.04.1999 made in C.P.Nos.170 of 1995 and 35 of 1997, M/s Deve Sugars Limited was wound up and the Official Liquidator was appointed as the liquidator of the said company. In compliance with the said order, the Official Liquidator took possession of the assets consisting of plant and machinery belonging to the company in liquidation situated at the factory premises of the company at Harige village, Shimoga Taluk, Karnataka State on 28.09.1999 and thereupon appointed the Tungbhadra Sugar Works Mazdoor Sangha, the ex-workers union to safeguard the assets of the company in liquidation and their payment to be made out from the godown rent collected from the Central Ware Housing Corporation, Bangalore. The learned counsel further submitted that the ex-directors of the company in liquidation have neither filed statement of affairs nor handed over the books and records pertaining to the company in liquidation and the ex-directors have also not co-operated for taking possession of the assets of the company. Therefore, the Official Liquidator

issued a notice dated 27.12.2021 to the ex-directors of the company in liquidation seeking clarification on the assets of the company in liquidation, but the ex-directors failed to appear before the Official Liquidator. He also submitted that as per the order dated 29.11.2018 made in C.A.No.673 of 2018, claims from various creditors of the company in liquidation were called for by causing publication on 20.01.2019 in the newspapers viz., The New Indian Express, Dinamani and Kannada Prabha, thereby fixing 08.02.2019 as the last date for submission of claims in the prescribed format as per the Companies (Court) Rules, 1959. He also submitted that even prior to the invitation of claims, the Official Liquidator had received voluntary claims from the workmen in Form No.67 amounting to Rs.19,28,02,288/- and 28 claims from preferential and ordinary creditors amounting to Rs.37,52,64,676.31p. Again referring to Section 536 of the erstwhile Companies Act, the learned counsel submitted that as per the said provision, after the commencement of the winding up of the company, if any transfer takes place, the same shall be void.

8. In reply thereto, Mr.G.Rajagopalan, learned Senior Counsel for the applicant submitted that Section 536 of the erstwhile Act will apply only if

there is dispossession of the properties of the company after the commencement of the winding up proceedings. But in the present case, there was no transfer or conveyance of the properties from the applicant to the company in liquidation and none of the properties had vested with the company in liquidation, because the land and machinery in question absolutely belong to the applicant, which is a separate legal entity. Even the Assistant Official Liquidator in his letter dated 07.05.2021 addressed to the Deputy Commissioner, District Administrative Officer, Shimoga has clarified that M/s Tungbhadra Sugar Works Limited and M/s Deve Sugars Limited are two different entities and in the said letter, it is further clarified that the applicant is a company registered in the State of Maharashtra and M/s Deve Sugars Limited is registered in the State of Tamil Nadu and as per the bank statement that were filed before the Debts Recovery Tribunal, there were no transfers made to Deve Sugars Limited by Tungbhadra Sugar Works Limited. Hence, Section 536 does not apply in the said scenario. Again Mr.Rajagopalan submitted that even as per the status report dated 27.02.2023, the ex-directors of the company have not filed the statement of affairs as required under Section 454 of the Companies Act, 1956 from the date of winding up of the company and they have not responded to the notice issued by the Official Liquidator. Therefore, impleading them at this stage is irrelevant, when they themselves did not show any response to the notice given by the Official Liquidator. In any event, the statement of affairs to be filed by the ex-directors of the company in liquidation does not concern the present applications, inasmuch as liquidation proceedings of the company have no nexus with the present applications seeking for release of the properties belonging to the applicant.

9. Heard the learned counsel appearing for the parties.

10. It is not in dispute that Deve Sugars Limited was ordered to be wound up on 16.04.1999 in Company Petition Nos.170 of 1995 & 35 of 1997 and the Official Liquidator took possession of the assets of Deve Sugars Limited situated at Harige village on 28.09.1999. The State Bank of Mysore filed Company Application Nos.1251-1253 of 1999 in the then pending Company Petition No.170 of 1995, seeking leave of the Company Court in the High Court at Madras, to pursue the recovery proceedings before the Debts Recovery Tribunal, Bangalore. By order dated 10.03.2000, this Court granted leave subject to the condition that no coercive steps be

taken against the assets of the company Deve Sugars Limited during or after the conclusion of the proceedings before the Tribunal. Thereafter, the Debts Recovery Tribunal, Bangalore issued the recovery certificate dated 15.05.2002 and the State Bank of Mysore filed Company Application No.1300 of 2003 with a prayer that the bank be permitted to seek execution of the recovery certificate. Indisputably, the Court neither heard nor passed any order on the above application, as the Registry returned the above Company Application No.1300 of 2003 by recording an endorsement that leave of the Court was not necessary. The Recovery Officer thereafter proceeded with the sale of the properties of Deve Sugars Ltd. But Tungabadra Sugar Works Mazdoor Sangha, the workers' union objected to the execution of the recovery certificate by the Recovery Officer. The Official Liquidator, who was ordered to be impleaded in the recovery proceedings initiated by the State Bank of Mysore vide order dated 10.03.2000, also filed objections. All the above objections were overruled by the Recovery Officer. The workers' union, assailing the recovery proceedings, preferred appeal in AOR No.15 of 2006, whereby, accepting the bid of Rs.10.25 crores offered by Anita International, the sale was confirmed in their favour on 12.09.2005 by the Recovery Officer. The

Company Application Nos.2740-2742 of 2007 filed by the Official Liquidator and others assailing the above confirmation order dated 12.09.2005, were dismissed on 03.03.2009 on the ground of availability of alternative remedy under the Recovery of Debts Due to Banks and Financial Institutions Act. The intra-Court appeals filed against the said order in O.S.A.Nos.59-63,76,77 and 82 of 2009 were allowed by the Division Bench on 17.09.2009 and the sale confirmed in favour of Anita International by the Recovery Officer, was set aside. When the auction purchaser-Anita International preferred appeals before the Supreme Court in C.A.Nos.6042-6048 of 2011 aggrieved by the said order, the same were dismissed by the Supreme Court on 04.07.2016 upholding the order passed by the Division Bench.

11. It is relevant to mention herein that when the applicant Tungbhadra Sugar Works Limited, being a third party, was not impleaded as a party respondent in the proceedings before the Supreme Court, the applicant, giving reasons for the delay and also proving their ownership over the properties, filed applications for impleadment before the Supreme Court stating that they were ready to settle the dues of the workers, creditors

and other statutory dues and that the management was taking necessary actions for revival of the company for the welfare of 947 workmen. Accepting their case that the applicant was a necessary party and was ready to settle the dues of the workmen, creditors and other statutory dues and the management was also taking necessary actions for revival of the company for the welfare of 947 workmen, the Supreme Court allowed the impleadment applications. In the meanwhile, the debts of Tapti Machines Private Limited were later assigned to MTitanium Apartments Private Limited vide the deed of assignment dated 06.01.2012.

12.1. Firstly, MTitanium Apartments Private Limited has also filed an affidavit supporting the case of the applicant that they did not make any claim against the applicant as it is a different entity. The affidavit also shows that the liabilities pending to them have been settled outside the Court and no dues are to be received from the company in liquidation, as a result, the 126.14 acres of land, which were mortgaged as collateral security to the State Bank of Mysore, belong to the applicant Tungbhadra Sugar Works Limited. The affidavit also says that they have no objection for handing over the possession of the properties to the applicant by the Official

Liquidator. The relevant paragraphs of the affidavit dated 26.11.2021 filed by the Authorised Signatory of MTitanium Apartments Private Limited are extracted hereunder:-

> "6. I state that the Respondent 3rd Party impleaded in the above mentioned Civil Appeal knowing the fact that Applicant/Proposed Respondent i.e. Tungbhadra Sugar Works Limited and the company in liquidation i.e. Deve Sugars Limited are two different entities. I further state that we did not make any claim against Applicant/Proposed Respondent on the basis that it is a different entity.
>
> 7. I state that the liabilities pending to us have been settled outside the Court proceedings and no dues are pending to be received from the company in liquidation.
>
> 8. I further state that the properties of 126.14 acres of land which were mortgaged as collateral security to State Bank of Mysore belong to the Applicant/Proposed Respondent i.e. Tungbhadra Sugar Works Limited and the said company is the title owner of the properties.
>
> 9. I state that we have No Objection in handing over the possession of the properties to Applicant/Proposed Respondent by the Official

Liquidator."

12.2. Secondly, the State Bank of Mysore had assigned the debt of Deve Sugars Limited to Pegasus Assets Reconstruction Private Limited vide assignment deed dated 18.09.2012.

12.3. Thirdly, the applicant has made one time settlement with the respondent secured creditor, Pegasus Assets Reconstruction Private Limited, therefore, the applicant, as a corporate guarantor of the loan, had settled the dues of Deve Sugars Limited for a sum of Rs.42.55 crores including interest and also obtained the no dues certificate dated 20.10.2021 from Pegasus Assets Reconstruction Private Limited. The relevant portion of the no dues certificate dated 20.10.2021 issued by Pegasus Assets Reconstruction Private Limited is reproduced below:-

> "We have received the entire OTS amount of Rs.42.55 crores (Rupees Forty Two crore and fifty five lakhs only) as full and final payment against credit facilities granted to the borrower, M/s Deve Sugars Limited (in Liquidation) by the Assignor Bank (State Bank of Mysore).
>
> We confirm that the borrower and Guarantor do not owe us any further dues in respect of the credit facilities availed by M/s Deve Sugars Limited in favour of Pegasus Assets Reconstruction Pvt.Ltd,

> acting in its capacity as the trustee of "Pegasus Group Seventeen Trust I" by State Bank of Mysore vide Assignment Agreement dated 18.09.2012."

Pursuant thereto, they have also handed over all the title documents as per the list attached thereto from Serial Nos.(i) to (xxi) on 20.10.2021 to the applicant.

12.4. Fourthly, Pegasus Assets Reconstruction Private Limited has also addressed a letter on 20.10.2021 to the Sub Registrar, Shimoga for lifting the lien created on the lands, as the corporate guarantor M/s Tungbhadra Sugar Works Limited had settled the account of the borrower. In view of the above, when the charge against the properties is completely lifted, the applicant is entitled to the possession of the subject land including the plant and machinery.

12.5. Fifthly, the applicant is a separate entity with CIN No.U74110MH1957PLC010943 and has been registered with the Registrar of Companies, Mumbai since 24.09.1957 having registered office at G C-1, C Wing, Ground Floor, Gundecha Enclave, Kherani Road, Sakinaka, Andheri East, Mumbai and Deve Sugars Limited is a separate entity with CIN No.U15421TN1993PLC024423 and has been registered with the Registrar of Companies, Chennai. Besides, the Deputy Commissioner, Shimoga also conducted a joint meeting with the Official Liquidator of Deve Sugars Limited and Tungbhadra Sugar Works Limited to clarify the status of Tungbhadra Sugar Works Limited. One another important aspect is that the Official Liquidator has clarified that Deve Sugars Limited is under liquidation and the status of Tungbhadra Sugar Works Limited is to be obtained from the Registrar of Companies, Mumbai. This apart, the Deputy Commissioner also addressed a letter to the Registrar of Companies, Mumbai requesting for the status report of Tungbhadra Sugar Works Limited and the Registrar of Companies has also clarified and confirmed that the status of Tungbhadra Sugar Works Limited is active and no winding up proceedings are initiated or pending against it. Moreover, the Assistant Official Liquidator vide letter dated 07.05.2021 addressing the Deputy Commissioner, Shimoga has further confirmed that Tungbhadra Sugar Works Limited and Deve Sugars Limited are two separate legal entities and therefore directed the Deputy Commissioner to protect the assets belonging to Deve Sugars Limited.

13. The motto of justice is to resolve the dispute and give a quietus to the problem once and for all. In the case on hand, when the Official

Liquidator was appointed by the Court to resolve the disputes of the secured creditors, borrowers, workmen and the other creditors, peculiarly, the disputes between the creditors and the borrowers have been resolved. Evidently the borrower, having accepted the settlement, has given their acceptance in writing that there is no dispute pending between them. Secondly, the evidence with regard to the settlement of disputes of the workmen also has been enclosed showing that the claims and the dues payable to the workmen also have been settled and the workmen have also reached a settlement before the Assistant Labour Commissioner, Mangalore. But the only objection raised by the Official Liquidator shows that these settlements have not been effected through him. It is true that the Official Liquidator has been appointed to resolve the disputes. But when the problems have been resolved and all the parties have filed their documents settling their dispute, we are able to see some lack of coordination from the Official Liquidator, therefore, the parties have themselves settled the disputes amicably. This has to be welcomed. Let us not delve into the reasons why the Official Liquidator has not cooperated to settle the dispute. But the fact remains that the problems have been resolved. The rules or procedures are the handmaids of justice and not the mistress of the justice.

Therefore, when the rules are framed to advance the cause of justice, in the case on hand, when the parties have settled their disputes, let us not sit on the hyper-technical rules. Therefore, better it is to close the matter accepting the case of the creditors and the debtors that there is no more disputes pending between them.

14. In view of the above, it may be restated that when Tungbhadra Sugar Works Limited addressed a letter to the State Bank of Mysore for creation of mortgage by deposit of title deeds in respect of the loans of Deve Sugars Limited, the applicant has confirmed that even after the execution of the agreement dated 15.01.1994, the execution of the conveyance deeds for transfer of properties in favour of Deve Sugars Limited have not been completed yet. In the meanwhile, since the agreement for transfer dated 15.01.1994 was cancelled on 30.09.1998, the rights and liabilities sought to be created by the sale agreement have become non est in the eye of law. Further, when the Company Petition No.170 of 1995 was allowed and Deve Sugars Limited was wound up on 16.04.1999, the Official Liquidator filed application for sale of the properties including Tungbhadra Sugar Works Limited, which is legally unsustainable in law. Moreover, the Hon'ble Apex

Court has allowed the impleadment application filed by the applicant Tungbhadra Sugar Works Limited, on the ground that the applicant was ready to settle the dues of the workmen, creditors and other statutory dues and that the management was also taking necessary actions for revival of the company for the welfare of 947 workmen. In pursuance of the same, the applicant had also entered into a memorandum of settlement on 12.10.2021 before the Assistant Labour Commissioner, Mangalore for settling the finalized amount of Rs.7,25,00,000/- as agreed on 07.12.2011 and has also paid a sum of Rs.72,50,000/- vide cheque No.011791 dated 08.12.2011 representing 10% of the total amount and also a further sum of Rs.1,45,00,000/- vide cheque No.808186 dated 15.04.2015 representing 20% of the total amount. It was also indicated therein that the applicant had paid Rs.4,95,83,833/- by way of part payments as per MOU dated 07.12.2011 along with interest with effect from 31.05.2020 for a sum of Rs.2,30,70,180/-, thus totalling to Rs.7,26,54,013/-.

15. In the light of the above, in the case on hand, we summarize the issues and pass the following order:-

(i) The applicant, Tungbhadra Sugar Works Limited has settled the debts of Deve Sugars Limited, the company in liquidation to the Pegasus Assets Reconstruction Private Limited and on receipt of the entire moneys, they have also returned the title deeds of the properties.

(ii) Since the charge against the company has been completely lifted, the applicant, Tungbhadra Sugar Works Limited is entitled to the possession of the land including the plant and machinery morefully described in the Schedule to the Judge's summons.

(iii) The first respondent, Official Liquidator is, accordingly, directed to handover the possession of the land, building, plant and machinery morefully described in the Schedule to the Judge's summons to the applicant, Tungbhadra Sugar Works Limited. Consequently, an injunction order is granted restraining the first respondent from in any manner interfering with the right of enjoyment of the applicant to the schedule mentioned properties.

(iv) Since the workmen's dues have also been settled by the applicant, as indicated above, the first respondent is hereby directed to pay the arrears of rent of the warehouse, after deducting the security expenses incurred for maintaining the properties, including the balance funds available, to the applicant within a period of four weeks from the date of receipt of a copy of this order.

In the result, Company Application Nos.298 to 300 of 2021 are allowed in the above terms. Consequently, for the reasons mentioned above, Company Application No.626 of 2017 is dismissed.

Speaking order (T.R.,A.C.J.) (S.S.K.,J.)
Index : yes 11.05.2023
Neutral Citation : yes
ss

THE HON'BLE ACTING CHIEF JUSTICE

AND

SATHI KUMAR SUKUMARA KURUP, J.

ss

Order in

Comp.A.Nos.626 of 2017 etc.

in C.P.No.170 of 1995

11.05.2023