

WP No.34030 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2023

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No.34030 of 2022
and WMP No.33489 of 2022

P.Ayyakannu

... Petitioner

VS

1. The Government of Tamilnadu,
Rep by its Secretary,
Agriculture Department,
St.George Fort, Chennai.
2. The Commissioner of Sugar,
Government of Tamil Nadu,
690, Anna Salai, Chennai.
3. The District Collector,
Cuddalore.
4. Mr.Ramakrishnan Sadhasivan
Liquidator of M/s Thiru.Arooran Sugars Limited,
28, Menod Street, Purasavakkam,
Chennai-7.
5. The Kals Distillers Private Lintied,
T.Nagar, Chennai.

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents to pay the sugar cane arrears payable to the farmers those who supplied sugar cane to the Arooran Sugar Limited and also to discharge the loan fraudulently borrowed by the Arooran Sugar Limited in the name of farmers from the banks.

For the Petitioner : Mr.S.Muthukrishnan

For the Respondents : Mr.S.Silambanan
Addl.Advocate General
Assisted by Mr.P.Muthukumar,
State Government Pleader,
RR1 to 3

: Mr.P.H.Aravind Pandiyan
Senior Counsel
Assisted by Mr.B.Dhanaraj
For R-4

: Mr.P.S.Raman
Senior Counsel
Assisted by Mr.T.K.Baskar
for R-5

* * * * *

ORDER

(Order of the Court was made by the **Hon'ble Acting Chief Justice**
and
D.Bharatha Chakravarthy,J.)

A. Prelude :

"உழுதுண்டு வாழ்வாரே வாழ்வார்மற் றெல்லாம்
தொழுதுண்டு பின்செல் பவர்." (**Thirukkural -1303**)

This is a converse case where the small and marginal sugarcane farmers, who supplied sugarcane as per the mandate of the State to the fourth respondent company, namely, ThiruArooran Sugars Limited, during the years 2013 to 2017, are made to be praying with folded hands, not demanding any favour, but for the price due of the sugarcane supplied by them.

B. The PIL & Its Maintainability :

2. This public interest litigation is filed by one *P.Ayyakannu*, the State President of an agriculturists' association. Objections to the maintainability of the public interest litigation have been raised by both the Liquidator of *Thiru Arooran Sugars Limited* and also the new entity, which is going to run the said sugar mill, namely, *The Kals*

Distilleries Private Limited, the fourth and fifth respondents herein. Their preliminary objection is that when the affected farmers themselves have taken part in the Committee of Creditors meeting and other proceedings before the National Company Law Tribunal (NCLT), Chennai and had accepted for 57% of the Fair and Remunerative Price (FRP), contrary to their will the public interest litigation is unnecessarily filed by the writ petitioner. In response thereof, when this Court raised the said query to the petitioner and directed him to get affidavits from the affected farmers, the petitioner has filed statements duly signed by large number of farmers along with their Membership number, Village and the balance amount due to them.

2.1. Secondly, we had also gone through the order of the NCLT in this regard, which we are going to deal with in the later part of the judgment. It is seen that out of 14,000 farmers who were directed to vote, when all of them assembled, there was agitation on behalf of these farmers leading to some of them tearing and throwing away ballot papers and no voting took place. Thereafter, it was decided on behalf of the Committee not to assemble farmers, but to separately deal with them. Even with such an attempt, they were able to get ballots only from about 1086 farmers, which is not even 10% and only

by taking into account the total amount due and the volume of debt of the fourth respondent company, namely, ThiruArooran Sugars Limited, their objections were steamrolled and the order of the NCLT was passed accepting the compromise proposal. Therefore, we are unable to accept the submission on behalf of the respondents 4 and 5 as if all the farmers have participated and accepted the verdict of the NCLT and the public interest litigation cannot be entertained. On the other hand, we find that the affected farmers are small and marginal farmers languishing in debt after supplying sugarcane and without the wherewithal to individually take legal recourse themselves and therefore, there is overwhelming public interest to entertain this public interest litigation.

C. Facts in Brief :

3. The brief facts which can be culled out from the pleadings before this Court on behalf of the petitioner as well as the respondents are as follows:

3.1. Thiru Arooran Sugars Limited had two units situated at Thirumandangudi, Thanjavur District and A.Chittoor, Cuddalore District. Both the units had been allotted the mandatory areas, thereby

statutorily forcing the farmers of their territorial limits to supply their sugarcane only to the said sugar mill units by virtue of grant of command area under Order 6 of the Sugarcane (Control) Order, 1966. Both the units had stopped crushing operation from the year 2018-2019 and they had not paid the price of the sugarcane supplied, to the farmers from the year 2013 to 2017.

3.2. It is seen that in respect of the unit at Thirumandangudi, Thanjavur District, the total sum due was Rs.99.62 crore and in respect of A-Chittoor unit at Cuddalore District, the total sum due was Rs.57.89 crore, in all totalling to Rs.157.51 crore. The following table provides the further details of the sum due:

<i>Details of Claim submitted by District Collectors Thanjavur and Cuddalore Rs. In Cr.</i>				
Sugar Mills	FRP	Interest	SAP	Total
ThiruArooranThirumandangudi	35.19	26.32	38.11	99.62
ThiruArooranA.Chittoor	11.21	3.39	43.29	57.89
Total	46.40	29.71	81.40	157.51

3.3. In view of the default, the respective District Collectors, namely, the District Collector, Thanjavur and the District Collector, Cuddalore, initiated proceedings under Order 3 of the Sugarcane

(Control) Order and started recovering amounts from the said defaulting company. It is stated that a sum of Rs.4.45 crore was recovered by initiating proceedings under the Revenue Recovery Act, 1890, by the District Collector, Thanjavur District and the same was disbursed to 749 sugarcane growers. Similarly, the District Collector, Cuddalore District, had recovered a sum of Rs.12.72 crore and distributed the same to 3574 growers.

3.4. While things stood thus, an application bearing IBA/243/2019 was filed by State Bank of India, one of the financial creditors of the fourth respondent company before the NCLT, Chennai, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC') for initiation of Corporate Insolvency Resolution Process (CIRP) against the fourth respondent company on the ground of its inability to repay the debts. The said application was admitted on 07.06.2019 and by declaring a moratorium under Section 14 of the IBC, the Tribunal appointed one R.Ragavendran, as the Interim Resolution Professional of the said company. The Interim Resolution Professional had caused a publication in Form-A dated 10.06.2019 intimating about the CIRP of the fourth respondent company, thereby calling for claims from the creditors and fixed the last date of submission of claims on or before

21.06.2019. After receipt of the claims and their verification, a Committee of Creditors (CoC) was constituted by the then Interim Resolution Professional on 06.07.2019 and during the first meeting of CoC on 06.07.2019, the said Interim Resolution Professional was appointed as the Resolution Professional. Even though the total sum due in respect of the farmers is Rs.157.51 crore, it is stated that the Resolution Professional had admitted the farmers' claim only for a sum of Rs.65,90,42,831/- under the head "Operational Creditors".

3.5. Even with such truncated claims, no resolution plan was approved by the CoC as per Section 30 of the IBC and in its meeting held on 27.11.2020, it was resolved to liquidate the fourth respondent company under Section 33 of the IBC. Accordingly, an application bearing IA/1186/IB/2020 was filed by the then Resolution Professional before the NCLT and by order dated 08.04.2021, NCLT ordered liquidation of the company and appointed the fourth respondent as the Liquidator of the company. Thereafter, the fourth respondent again published Form-B on 12.04.2021, inviting claims from the creditors and fixed the last date for submission of the claims on or before 08.05.2021. On behalf of the farmers, both the District Collectors of Cuddalore and Thanjavur submitted claims in Form-C on 06.05.2021

and 07.05.2021 for the above said respective sums mentioned in the tabular column, in all totalling to Rs.157.51 crore. The Liquidator, by its letter dated 29.06.2021, however, again admitted the claim only to the tune of Rs.21,06,66,356/- and Rs.57,41,54,911/- under the head "Operational Creditors", in all totalling to Rs.78,48,21,267/-.

3.6. Thereafter, on 14.07.2021, the Liquidator published an Expression of Interest calling for a scheme under Section 230 of the Companies Act, 2013 and as per Regulation 2B of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, on 14.07.2021 and fixed the last date as 13.08.2021. The Stakeholders Consultation Committee, in its meeting held on 08.10.2021 discussed the compromise/arrangement submitted by the fifth respondent namely, The Kals Distilleries Private Limited and accordingly, the Liquidator filed Company Application bearing CA(CAA)/ 113/2021 before the NCLT to convene the meeting of the stakeholders/ creditors of the fourth respondent company. Thereafter, the Tribunal, by its order dated 24.12.2021, allowed the said application and thereafter, another application for appointment of authorised representatives for the various classes of creditors was also allowed. One Mrs.Renuka Devi Rangaswamy, an Insolvency Professional, who had absolutely no

connection whatsoever with the farmers, was appointed to be the representative of the farmers before the Committee. Thereafter, ballot voting was attempted to be conducted and approximately, 14,000 ballot papers were printed containing the name of the farmers and their RYOT number. However, during the voting, the farmers were agitated by the fact that only an amount representing 57% of the total amount admitted by the Liquidator in all totalling to Rs.45.01 crore alone was proposed to be settled to them while their total due was Rs.157.51 crore and therefore, they agitated and took away all the ballot papers and dumped them in water. Thereafter, the said Professional did not want the farmers to unite and decided to organise separate mobile camps village-wise so that farmers can be approached separately to cast their votes and even in the said attempt, they were able to get the ballot votes of only 1086 farmers whose value was only Rs.19.50 crore and treated the rest of the farmers as abstained and submitted a report as if 100% votes were cast in favour of the resolution.

3.7. In the said background, as against the total debt of the said ThiruArooran Sugars Limited to its secured, unsecured, operational creditors, employees, shareholders, etc., in all amounting

to Rs.1583.53 crore, the proposal of the fifth respondent company to bring in a total sum of Rs.145.21 crore in respect of the two units was accepted by the Committee and the scheme of compromise is approved by the order dated 02.05.2022 of the NCLT in CP(CAA)30(CHE)/ 2022 and thus resulted in the fourth respondent company not having the corporate death, but there was also no revival as both the units being taken over by the fifth respondent company, namely, Kals Distilleries Private Limited and the net result is that no creditor whomsoever can proceed further against the company or its directors or guarantors and they have to rest content with the sum further divided by the Liquidator of the total sum of Rs.145.21 crore brought in by the fifth respondent company.

3.8. It is submitted that as per the said scheme of compromise, 57.36% due to the farmers being a sum of Rs.45.0146 crore have already been deposited with the Collectors and out of the deposited amount, already a major portion amounting to Rs.37.88 crore was already disbursed to the farmers and only a further sum of Rs.7.13 crore is remaining as balance. As far as the balance amount is concerned, it is the farmers who are not accepting the said sum and demanding that the entire sum should be paid to them and not 57% of the Fair and Remunerative Price alone.

D. The Earlier Interim Order :

4. It is at this stage that when this writ petition came up for hearing, we passed an interim order on 15.03.2023 pointing out the powers of the District Collector under Order 3 of the Sugarcane (Control) Order whereby in case of default of payment of the price of the sugarcane within 14 days from the date of delivery of the sugarcane, the amount due as well as the statutory interest of 15% per annum is to be collected by the Collector of the District from the defaulting company as arrears of land revenue and since the steps which are taken by the respondents and the representation before the NCLT were absolutely without reference to the said powers, we passed an interim direction to take all steps to get the money reimbursed as arrears of land revenue and to ensure that the farmers are paid the price of the sugarcane as expeditiously and to file a status report. Immediately thereupon, applications were filed to recall the said order by the fourth and fifth respondents stating that even though they were on record, they were not served with notices as on date of the said order and the relevant orders by the NCLT were not placed on record and in the said context, without further insisting upon the interim

order, we proceeded to hear this public interest litigation on merits finally after permitting all the parties to complete the pleadings.

E. The Submissions :

5. We heard Mr.S.Muthukrishnan, learned counsel appearing for the petitioner, Mr.S.Silambanan, learned Additional Advocate General assisted by Mr.P.Muthukumar, learned State Government Pleader for respondents 1 to 3, Mr.P.H.Aravind Pandian, learned senior counsel appearing for the Liquidator/fourth respondent and Mr.P.S.Raman, learned senior counsel appearing for the fifth respondent.

5.1. Learned counsel for the petitioner would submit that the entire dues of the farmers amounting to Rs.157.51 crore have to be settled with further statutory interest thereon. They have been agitating and several of them also, since died, are unable to bear the burden of debt. The companies successfully by filing applications on the file of NCLT have evaded payment to the farmers. The farmers are not asking for any benefit or subsidy, but the price for the sugarcane supplied by them. When the sugarcane has been crushed and the sugar has been sold and the proceeds have been exploited by the

companies, now refusing to pay them the amount and ordering to take only a fraction of the total sum due amounts to gross injustice and violative of not only Article 19, but also Article 21 of the Constitution of India in the facts and circumstances of the instant case. The official respondents are duty bound to protect the interest of the farmers as per Order 3 of the Sugarcane (Control) Order, as it is they who have passed orders entrusting the command area to the company which committed the default. Therefore, he would say that the writ petition be allowed and the entire amount be paid to the farmers.

5.2. Mr.S.Silambanan, learned Additional Advocate General appearing on behalf of the District Collectors, would submit that they have started taking action, but, however, in view of the applications filed before the NCLT, even though steps were taken to represent the farmers before the NCLT, they could only obtain and disburse the amount as ordered by the NCLT. If the farmers accept, the remaining Rs.7.13 crores also will be disbursed swiftly.

5.3. Mr.P.H.Aravind Pandian, learned senior counsel appearing on behalf of the liquidator, would submit that but for the order of compromise passed under Section 230 of the Companies Act,

2013, had the company been liquidated, the distribution of assets have to take place only as per Section 53 of the IBC, in which, firstly the Insolvency Resolution costs and liquidation costs have to be paid and thereafter, workmen's due for the last 24 months period should be given preference and then, the secured creditors should be given preference and thereafter, the other wages of the workmen due and the farmers would only come thereafter and therefore, if the two units of the mill were sold by public auction, the farmers could not have realised even a single paise and very graciously, they were granted 57% of the admissible claims which itself was taking into account the farmers' conditions. The learned senior counsel would submit that the provisions of Order 3 of the Sugarcane (Control) Order cannot override the order of the NCLT in view of Section 238 of the IBC. The provisions of IBC will override even if there is any inconsistency with the other laws in force. The learned senior counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Duncans Industries Ltd. vs. A.J.Agrochem***, reported in **2020 (2) CTC 842**, more specifically relying upon paragraph 7.4 to contend that the Hon'ble Supreme Court of India has held that the IBC being the later enactment will prevail over earlier enactment containing similar clauses. He would submit that that was a case which was similar in nature relating to the

Resolution Process of a tea manufacturing company and in spite of the provisions under the Tea Act, 1953, to consult the Central Government before winding up of the company, the Hon'ble Supreme Court of India held that in view of Section 238 of the IBC, such consultation was unnecessary and held that the provisions of the IBC will prevail over. The learned senior counsel also relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2001) 3 SCC 71 in *Solidaire India Limited -Vs- Fairgrowth Financial Services Ltd*** for the proposition that when two enactments contain the non obstante clause, the later enactment would prevail.

5.4. Mr.P.S.Raman, learned senior counsel appearing on behalf of the fifth respondent, would submit that pursuant to the Expression of Interest, after considering the value of the two units of ThiruArooran Sugars Limited, the fifth respondent company had, in total, offered a sum of Rs.145.21 crore. The fifth respondent's offer is clear and categorically conditional upon the said sum being taken as full consideration of the value of the two units of ThiruArooran Sugars Limited to be vested in the fifth respondent. Hereafter, it is the fifth respondent being a third party entity which is going to operate the two units of the Mill. When the scheme framed under the Companies Act is

in respect of earlier company, namely, ThiruArooran Sugars Limited, no claim whatsoever, in any event, can be claimed against the fifth respondent company over and above what is ordered to be paid by the NCLT. As a matter of fact, without even waiting for the timeline, the fifth respondent has paid the said amount in advance. Therefore, no further sum whatsoever can be directed to be paid by the fifth respondent.

5.5. Mr.P.S.Raman, learned senior counsel, would submit that the fifth respondent company had nothing against the farmers. As a matter of fact, they will be again supplying sugarcane to the fifth respondent company as they would come under its jurisdictional area. If by any means, they get their 100% due either from the State or from the previous company, the fifth respondent has no objection whatsoever. If the State is at fault in not taking steps to recover the entire sum due as per Order 3 of the Sugarcane (Control) Order, then the liability cannot be mulcted at the fifth respondent company after the order of the NCLT. Therefore, he would submit that no further steps can now be taken under Order 3 of the Sugarcane (Control) Order or any distraint proceedings can be caused in respect of the units at Thirumandangudi, Thanjavur and A.Chittoor, Cuddalore or against any

other asset belonging to the fifth respondent company.

F. Discussion & Findings :

6. We have heard the rival submissions on either side and perused the material records of the case.

6.1. Firstly, we have to understand the plight of the farmers. Sugarcane itself is a distant attraction/greener pasture on the other side of the river to any small and marginal farmer. The average small and marginal farmers, finding themselves to face certain difficulties and unable to bear the vagaries of the monsoon, availability of water and market fluctuation in respect of the paddy and other regular crops, switched over to sugarcane. Sugarcane is relatively long term crop as harvest would be taking place after ten to twelve months and a repeat for two more crops in all totalling for about 3 years. It involves higher investment. Firstly, the farmer has to tillage the field to greater depth, followed by harrowing, levelling and laying out the field so as to suit the planting of the sugarcane, which takes considerable costs. Secondly, the seedlings have to be purchased, with high costs. Before planting applying manure and fertilizers is essential. After planting, not

only meticulously the field has to be watered, initially twice or thrice the weeds have to be removed. Not to mention about the price pesticides and other further fertilisers. As the sugarcane grows, after the removal of unnecessary leaves/water shoots, once again the correction of the field has to take place. This apart, the menace of wild boar/other animals which feed of sugarcane cause considerable amount of damage to the crops. Not to mention about fire accidents caused by not only the negligent alcoholics/beediwalas throwing the matchstick into the sugarcane fields, but also by the mischief mongers. Thereafter, when the crop is ripe to be cultivated, the cutting order should be received on time. The labour for cutting the sugarcane now costs huge and if the season of cutting is dry without rains, the same would gravely affect the total weight of the sugarcane and if it rains, there will be slush on the path resulting in the lorries/trucks not coming near the field and the farmers have to spend a huge amount in transporting the sugarcane from the fields to the main road by employing labour. After all these, the spillage and theft on the way to the mill is also borne by the farmers. Not to mention about weighment. Many a time, the farmers wonder the same amount of stacking in the loading vehicle shows difference in weights ranging as high as one to two tons. After all this, there is a delay in getting the price of the

sugarcane. Taking into account all these, it is roughly estimated that the cost and expenses involved to an ordinary farmer, is more than 80% of the Fair and Remunerative Price which is fixed by the Central Government which is like the minimum wage and it is not the fair market price. Thereafter, the State Governments are authorised and they take into account the actual market value considering the actual expenses involved, the price of the sugarcane, etc., and they fix the State Advised Price (SAP). If only the State Advised Price is paid, the ordinary small and marginal farmers can survive.

6.2. Section 3 of the Essential Commodities Act, 1955 enables the Central Government that if it is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. In exercise of its powers, the Central Government has made the Sugarcane (Control) Order, 1966. Order 6 reads as follows :

“6. Power to regulate distribution and

movement of sugarcane.—(1) *The Central Government may, by order notified in the Official Gazette.—*

(a) reserve any area where sugarcane is grown (hereinafter in this clause referred to as 'reserved area') for a factory having regard to the crushing capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar, with a view to enabling the factory to purchase the quantity of sugarcane required by it;

(b) determine the quantity of sugarcane which a factory will require for crushing during any year;

(c) fix, with respect to any specified sugarcane grower or sugarcane growers generally in a reserved area, the quantity or percentage of sugarcane grown by such grower or growers, as the case may be, which each such grower by himself, or, if he is a member of a co-operative society of sugarcane growers operating in the reserved area, through such society, shall supply to the factory concerned;

(d) direct a sugarcane grower or a sugarcane growers' co-operative society, supplying sugarcane to a factory, and the factory concerned to enter into an agreement to supply or purchase, as the case may be, the quantity of sugarcane fixed under paragraph (c);

(e) direct that no 2 [x x x x x] khandsari sugar or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in the licence issued in this behalf;

(f) prohibit or restrict or otherwise regulate the export of sugarcane from any area (including a reserved area) except under and in accordance with a permit issued in this behalf.

(2) Every sugarcane grower, sugarcane growers' co-operative society and factory, to whom or to which an order made under paragraph (c) of sub-clause (1) applies, shall be bound to supply or purchase, as the case may be, that quantity of sugarcane covered by the agreement entered into under the paragraph and any willful failure on the part of the sugarcane grower, sugarcane growers' cooperative society or the factory to do so, shall constitute a breach of the provisions of this Order:

Provided that where the default committed by any sugarcane growers' co-operative society is due to any failure on the part of any sugarcane grower, being a member of such society, such society shall not be bound to make supplies of sugarcane to the factory to the extent of such default."

Thus, the authorities are vested with the powers to grant a command area to a sugar mill. But however, the said exercise of power is also coupled with duty to fix the price and in default of payment within fourteen days, the entire amount along with statutory interest has to be recovered as arrears of land revenue. It is useful to extract Order 3, which reads as follows :

"3. Minimum price of sugarcane payable by producer of sugar.— (1) *The Central Government may, after consultation with such authorities, bodies or associations as it may deem fit, by notification in the Official Gazette, from time to time, fix the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane*

purchased by them having regard to —

- (a) the cost of production of sugarcane;*
- (b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities;*
- (c) the availability of sugar to the consumer at a fair price;*
- (d) the price at which sugar produced from sugarcane is sold by producers of sugar; and*
- (e) the recovery of sugar from sugarcane:*

Provided that the Central Government or with the approval of the Central Government, the State Government, may, in such circumstances and subject to such conditions as specified in Clause 3-A, allow a suitable rebate in the price so fixed.

Explanation.—

- (1) Different prices may be fixed for different areas or different qualities or varieties of sugarcane.*
- (2) When a sugar factory produces ethanol directly from sugarcane juice or B-Heavy molasses, the recovery rate in case of such sugar factory shall be determined by considering every 600 litres of ethanol so produced as equivalent to 1 tonne of production of sugar;*
- (3) Production of ethanol directly from sugarcane juice shall be allowed in case of sugar factories only.*

(2) No person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub-clause (1).

(3) Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane growers' co-

operative society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or the sugarcane growers' co-operative society or that fixed under sub-clause (1), as the case may be, either at the gate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the Bank account of the seller or the co-operative society, as the case may be.]

(3-A) Where a producer of sugar or his agent fails to make payment for the sugarcane purchased within 14 days of the date of delivery, he shall pay interest on the amount due at the rate of 15 per cent per annum for the period of such delay beyond 14 days. Where payment of interest on delayed payment is made to a cane growers' society, the society shall pass on the interest to the cane growers concerned after deducting administrative charges, if any, permitted by the rules of the said society.

(4) Where sugarcane is purchased through an agent, the producer or the agent shall pay or tender payment of such price within the period and in the manner aforesaid and if neither of them has so paid or tendered payment, each of them shall be deemed to have contravened the provisions of this clause.

(5) At the time of payment at the gate of the factory or at the cane collection centre, receipts, if any, given by the purchaser, shall be surrendered by the cane grower or co-operative society.

(6) Where payment has been made by transfer or deposit of the amount to the Bank account of the seller or the co-operative society, as the case may be, the receipt given by the purchaser, if any, to the grower or the co-operative society if not returned to the purchaser, shall become invalid.

(7) In case, the price of the sugarcane remains unpaid on the last day of the sugar year in which cane supply was made to the factory on account of the suppliers of cane not coming forward with their claims therefor 4 [x x x x x], it shall be deposited by the producer of sugar with the Collector of the district in which the factory is situated, within three months of the close of the sugar year. The Collector shall pay, out of the amount so deposited, all claims considered payable by him and preferred before him within three years of the close of the sugar year in which the cane was supplied to the factory. The amount still remaining undisbursed with the Collector, after meeting the claims from the suppliers, shall be credited by him to the Consolidated Fund of the State, immediately after the expiry of the time limit of 3 years within which claims therefor could be preferred by the suppliers. The State Government shall, as far as possible utilise such amounts for development of sugarcane in the State.

(8) Where any producer of sugar or his agent has defaulted in furnishing information under Clause 9 of this Order or has defaulted in paying the whole or any part of the price of sugarcane to a grower of sugarcane or a sugarcane growers co-operative society within fourteen days from the date of delivery of sugarcane, or where there is an agreement in writing between the parties for payment of price within a

specified time and any producer or his agent has defaulted in making payment within the agreed time specified therein, the Central Government or an officer authorised by the Central Government in this behalf or the State Government or an officer authorised by the State Government in this behalf may either on the basis of information made available by the producer of sugar or his agent or on the basis of claims, if any, made to it or him regarding non-payment of prices or arrears thereof by the concerned grower of sugarcane or the sugarcane growers co-operative society as the case may be, or on the basis of such enquiry that it or he deems fit, shall forward to the Collector of the district in which the factory is located, a certificate specifying the amount of price of sugarcane and interest due thereon from the producer of sugar or his agent for its recovery as arrears of the land revenue.

(9) The Collector on receipt of such certificate, shall proceed to recover from such producer of sugar or his agent the amount specified therein as if it were arrears of land revenue.

(10) After effecting the recovery, the Collector shall intimate to the concerned growers of the sugarcane or the concerned sugarcane growers co-operative societies through a public notice to submit their claims in such a manner as he considers appropriate within thirty days: Provided that the Collector may, for the reasons to be recorded in writing allow the submission of claims after the period so specified if he is satisfied that there was sufficient cause for not submitting such claim earlier.

(11) If the amount recovered is less than the amount

specified in the certificate under sub-clause (8), the Collector shall distribute the amount so recovered among the concerned growers of the sugarcane or the concerned sugarcane growers co-operatives in proportion to the ratio determined by the Collector on the basis of the sugarcane supplied by the concerned growers of sugarcane or the sugarcane growers' co-operative society as the case may be.

(12) If the amount recovered and distributed under sub-clause (11) is less than the amount specified in the certificate under sub-clause (8), the Collector shall proceed to recover the remaining amount, as if it were arrears of land revenue till the full amount is recovered and distributed to satisfy the remaining claims.

(13) If the amount is given to the concerned sugarcane growers co-operative societies, it shall distribute the amount through cheque/draft/or any other recognised banking instrument on any Scheduled Bank to the concerned sugarcane growers within ten days of the receipt of the amount from the Collector.

(14) If the concerned sugarcane grower or the concerned sugarcane growers co-operative society do not come forward to claim or collect the amount so recovered by the Collector within three years from the date of the public notice referred to in sub-clause (10), the unclaimed amount shall be deposited by the Collector in the Consolidated Fund of the State. "

(emphasis supplied)

Thus, it can be seen that the power to issue a command to the

sugarcane grower is coupled with the duty to fix the minimum price and to recover the dues if any as arrears of land revenue. It can be seen in the instant case that when dues are not being paid on time right from the year 2013, after passing orders commanding the farmers to supply only to ThiruArooran Sugars Limited in exercising powers under Order 6 of the Sugarcane (Control) Order, the mandate and the procedure prescribed under Order 3 of the Sugarcane (Control) Order is not at all followed. Therefore, there has been clear failure on the part of the State authorities in realising the price after issuing a statutory mandate to the farmers.

6.3. Now for proceeding further, the proceedings of the NCLT is sought to be put against the farmers. We have carefully gone through the entire records before the NCLT and considered the submissions made by both the learned senior counsels in that regard. We find the following aspects :

- i) Firstly, the law relating to recording of compromise during liquidation under IBC is no longer res integra and the Hon'ble Supreme Court of India has already considered the issue in detail in **Arun**

Kumar Jagatramka vs Jindal Steel and Power Limited, reported in **(2021) 7 SCC 474** and laid down as follows :

(a) The IBC is a well thought out and well crafted Code and the question of compromise under Section 230 of Companies Act, itself is brought in by way of Judicial Intervention, which should be kept to barest minimum (Paragraph 94);

(b) The compromise should result in revival of the company and such revival is in public interest(Paragraph 64);

(c) The compromise shall conform to commercial Morality (Paragraph 64).

In the instant case, though the fourth respondent is saved from a corporate death, the compromise does not result in its revival as they only escape from the scene and the liability to pay a huge debt of 1500 crores and all their

directors/guarantors is are liberated from their liability. Thus, the compromise neither conforms to commercial morality nor is in any public interest. As a matter of fact, the only purpose pleaded by the liquidator is that they can side step and violate Section 53 of IBC. Thus, it smells foul of the law laid down by the Hon'ble Supreme Court of India in every aspect.

- ii) Secondly, we find the very compromise proceedings under Section 230 of the Companies Act and the manner in which it is dealt with is totally without considering the plight of the farmers and the effect of the provisions and proceedings under the Essential Commodities Act, 1955. The Tribunal as well as the stakeholders have totally disregarded the provisions of the Essential Commodities Act. The importance of the said Act need not be restated by us. As a matter of fact, the primary difference between the India as a colony under British and India as an

independent nation is that irrespective of vagaries of weather, failure of monsoon or floods, majority of the people, the millions of the masses in this Country are not allowed to go hungry. The work done by the Central and the State Corporations in this regard is incomparable and the amount of essential commodities which are procured, stored and distributed and made available for every human-being to consume is unmatched. As a matter of fact, without any exception, all Governments both Central and State are extremely sensitive and careful when it comes to food and that is why, the people of this Country worship their leaders. In order to achieve this goal of procuring and supplying the essential commodities, the primary tool in the hands of the Government is the Essential Commodities Act. It can be said that the Essential Commodities Act is one of the primary reasons of the very existence of our democracy. The legislature had created special rights, obligations and special machinery

for enforcing the special rights and obligations under the Essential Commodities Act, 1955 and therefore, when it comes for payment of price of the essential commodities, the Essential Commodities Act is the special legislation and therefore, following the basic and time-tested principle *generaliaspecialibus non derogant*, that is, even in case of any repugnancy or inconsistency, only the Special Act will prevail over the General Act will apply. In any event there is no repugnancy as both the legislations can be harmoniously read. Under the IBC, the amount has to be distributed in case of liquidation as per Section 53 of the IBC. If one goes through the waterfall mechanism adopted in Section 53, right from workmen, secured creditors, financial and other unsecured creditors or other persons, it can be seen that every one of them had dealt with the company under liquidation on their own whereas the sugarcane farmer was statutorily mandated to supply sugarcane by an order passed by the

District Collector under Order 6 of the Sugarcane (Control) Order. Therefore, this situation of a statutorily mandated farmer is not at all dealt with under Section 53 of the IBC and it is quite impossible that when a legislation is enacted, the framers can provide answer for every situation that may arise. Therefore, it can be said that there is any inconsistency as far as the present case and the judgment of the Hon'ble Supreme Court of India in ***Duncans Industries*** (supra) is in respect of Tea Act, that too dealing with similar provisions of winding up, while the same is not under the Essential Commodities Act, which totally presents a different picture and necessity as stated supra. It is essential to note that Section 6 of the Essential Commodities Act, 1995, states as follows :

“6. Effect of orders inconsistent with other enactments.-Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment

other than this Act. "

The NCLT has not even adverted to the above provision and considered the matter, while ordering the compromise.

iii) Finally, even under Section 230 of the Companies Act, the compromise can be made applicable to particular class of creditors. In this case, since none of the farmers voted at the first meeting and all of them have opposed to the scheme and the same was not at all considered. As a matter of fact, after all the farmers 100% opposed the scheme, they were separately contacted and even then, only 1086 farmers submitted their ballots agreeing for 57%. In any event, the same is taken as if the 100% farmers being present and voted and the scheme was stated to be approved. Absolutely, no empathetic consideration whatsoever is made while deciding their representative on board or while deciding the total amount admitted to be due or while deciding the percentage of the amount to be paid.

6.4. We have made the above observations and findings from the view of the Constitutional Court, exercising its powers under Article 226 of the Constitution, in which we traverse beyond a particular legislation and can visualise the interplay between more than one legislations, while the NCLT in this case seems to have lost itself in the maze while ordering the compromise.

6.5. Thus, it can be seen that the arguments relating to the proceedings of the NCLT are prima facie unsustainable. But, however, since the order has not been directly challenged before this Court, as it has to be assailed in the manner known to law by filing appeal to the appropriate forum, we refrain from setting aside or interfering with the same. Further, the fifth respondent company has also paid the compromise amount and is being disbursed and distributed by the Liquidator and therefore, as of now, the position is that as per the compromise scheme as sanctioned by the NCLT, the fifth respondent company is not liable to pay more than the amount of Rs.145.21 crore which it has already paid.

6.6. Be that as it may, the scheme framed by the NCLT as

well as the transfer of assets and ownership of assets are in respect of the lands in which the two units are situate along with the plant and machinery of the mill. The same does not directly or indirectly deal with the command area which has to be made by the State under Order 6 of the Sugarcane (Control) Order. Therefore, in spite of its advantage of being protected by the scheme, again the fifth respondent has to go before the State authorities, namely, the District Collector, Thanjavur as well as the District Collector, Cuddalore, for grant of command area under Order 6 and the very same farmers who are represented in this public interest litigation will be mandated to supply their sugarcane, which makes this case different from any other third party/clean slate auction purchase.

6.7. The Fair and Remunerative price is the barest minimum price which is fixed by the Central Government and even as per the fair and minimum price, a total sum of Rs.78.48 crore is now admittedly due by the parties. Therefore, we hold that when the State, after choosing to exercise the power under Order 6 of the Sugarcane (Control) Order had failed to take steps under Order 3 within the time and had not chosen either to implead themselves as a party before the NCLT nor having chosen to agitate the order of sanction of compromise

by the NCLT before the appropriate appellate authority, are only to blame themselves and therefore, are liable to make good the loss to the farmers. For the above, the farmers cannot be put to loss and therefore, they are entitled for payment of at least the minimum price being the Fair and Remunerative Price, if not the State Advised Price with further interest. Therefore, we hold that respondents 1 to 3 are liable to pay the balance sum of Rs.33.46 crore being the 43% of the admitted claim of Rs.78.48 crore. In view of the peculiar facts and circumstances of this case, we refrain from ordering further interest or the payment of the State Advised Price. It is also brought to our notice by the status report filed by the State authorities that further meeting with the fifth respondent has been conducted and in the outcome of the meeting, recommendations are made to make 100% Fair and Remunerative Price for the farmers. We make it very clear that the order of sanction of compromise by the NCLT can relate and hold good only in respect of the assets including the plant and machinery and the land in respect of the two units which is now conveyed to the fifth respondent company. The same does not actually deal with the rights and obligations of the State to pass orders providing a command area to the fifth respondent company neither it would be the ambit of the Companies Act or the IBC. Therefore, it would be very much open for

the State authorities to negotiate with the fifth respondent company while further extending/renewing the command area in respect of realising the balance sum which is now mandated by this order to pay to the farmers.

G. The Result:

7. In the result, the writ petition is disposed of on the following terms:

- (i) The respondents 1 to 3 shall pay to the concerned farmers the balance sum of Rs.33.46 crore being the balance amount of the admitted amount of Fair and Remunerative Price of Rs.78.48 crore, within three months from the date of receipt of a copy of this order;

- (ii) In view of the order of the NCLT dated 02.05.2022 approving the scheme in respect of the fourth respondent company ordering payment of 57% of the admitted claim of Rs.78.48 crore, no further distraint proceedings or proceedings under Order

3 of the Sugarcane (Control) Order shall be made under the fifth respondent company, as they have paid and discharged their liabilities of Rs.45.01 crore;

(iii) Within one week from the date of receipt of the copy of this order, the balance sum of Rs.7.13 crore lying with the District Collector, Thanjavur and the District Collector, Cuddalore, shall be disbursed to the eligible farmers in accordance with the scheme framed by the NCLT and the receipt of the said sum shall be without prejudice to the rights of the farmers to receive the balance sum from the State as ordered above; and

(iv) It would be however open for the State and its authorities either to avail the remedies available to it under law against the order of the NCLT dated 02.05.2022 and recover the amount due from the fourth respondent company or to negotiate with the fifth respondent company to

realise the above said sum of Rs.33.46 crore paid by it to the farmers while considering the matter of allotment of command area to the fifth respondent.

(v) There will be no order as to costs. Consequently, WMP No.33489 of 2022 is closed.

(T.R., ACJ.) (D.B.C., J.)
21.04.2023

Index : Yes/No
Neutral Citation : Yes/No
sra

To

1. The Secretary,
Government of Tamil Nadu,
Agriculture Department,
St.George Fort,
Chennai.
2. The Commissioner of Sugar
Government of Tamil Nadu,
690, Anna Salai,
Chennai.
3. The District Collector,
Cuddalore.

WP No.34030 of 2022

T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY, J.

(sra)

WP No.34030 of 2022

21.04.2023