

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CA No. 235/2018 & 236/2018  
in  
CP (IB) No.120/ALD/2017**

**Under Section 60(5) of the IBC, 2016**

**In the matter of:-**

M/s Ranasariya Poly Pack Private Limited

...Operational Creditor

Versus

M/s Uniworld Sugars Private Limited

...Corporate Debtor

**In the matter of CA No.235/2018:-**

**Pramod Kumar Sharma  
Uniworld Sugars Private Limited  
Resolution Professional  
H.No. 16, Dasharath Kunj-B  
West Arjun Nagar, Agra  
Uttar Pradesh- 282001**

....Applicant/ Resolution Professional

Vs.

**ED&F Man Sugar Limited, London, UK  
Through its Associate Company  
ED & F Man Commodities India Private Limited, Mumbai  
903-904, G-Plot, 9th Floor,  
Raheja Chambersfree Press Journal Marg  
Nariman Point Mumbai- 400021**

...Respondent No. 1

**In the matter of CA No.236/2018:-**

**Pramod Kumar Sharma  
Resolution Professional  
H.No. 16, Dasharath Kunj-B  
West Arjun Nagar, Agra**

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Uttar Pradesh- 282001

....Applicant/ Resolution Professional

Vs.

**ED&F Man Commodities India Private Limited**

903-904, G-Plot, 9th Floor,  
Raheja Chambersfree Press Journal Marg  
Nariman Point Mumbai- 400021

...Respondent No. 1

**Order delivered on: 20.03.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

For the Applicant in : Mr. Nilotpal Shyam, Advocate  
CA No.235/2018 & 236/2018

For the respondent in : Mr. Dhiraj Mehtre, Advocate  
CA No. 235/2018 & 236/2018 : Ms. Smiti Tewari, Advocate

**Per: Subrata Kumar Dash, Member (Technical)**

**ORDER**

**CA No. 236/2018**

The present application has been filed by the Resolution Professional of the Corporate Debtor, i.e. Uniworld Sugars Private Limited, for an amount of Rs. 69,76,50,573/- along with interest for delayed payment @ 8.25% p.a. aggregating to Rs. 72,719,959/-. It is stated that the respondent ED&F Man Commodities India Private Limited is also an unsecured creditor of the Corporate Debtor and had filed a claim of Rs. 1,662,370,480/-, made in

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Form-B dated 09.07.2018, and the same was admitted to the extent of Rs. 1,22,12,12,208/-.

2. In the instant application, the major objection of the applicant is that there is no Express Agreement between the Corporate Debtor and the respondent with regard to the set off of the debit balances with the credit balances. Further, under the IBC, 2016, there is no provision for setting off the balance between a creditor and corporate debtor. Therefore, the realization of these amounts is necessary for meeting the overdue liabilities of the Corporate Debtor.

3. The respondent has filed its reply vide Diary No. 960 dated 22.11.2018, wherein it is stated that the applicant has failed to acknowledge the tripartite arrangement between the respondent-ED&F Man, corporate debtor and Man Sugar, according to which the parties are maintaining a running ledger between them and only the net payable amount has been reflected in respective accounts.

4. It is submitted that the amounts claimed by the EDFM Group and the amounts admitted by the applicant under claim Form-I (by respondent) and claim Form-II (by Man Sugar) are much higher in quantum as compared to the claim of the applicant made under his demand letters dated 23.07.2018 and 09.08.2018 against the respondent and under demand letters dated 25.07.2018 and 08.08.2018 claimed against Man Sugar. Further, the applicant has admitted an amount of Rs. 1,47,93,27,540/- together with interest @ 8.25% under claim Form-I vide letter dated 11.07.2018. However, the applicant rejected the interest component vide his letter dated 14.08.2018. It is

further submitted that the applicant has filed a similar application titled; Pramod Kumar Sharma Vs. ED&F Man Sugar Limited, London, UK bearing CA No. 235/2018.

5. Rejoinder by the applicants was filed by diary No. 1022 dated 05.12.2018, wherein the applicant has claimed as below:

a. The transactions between the Corporate Debtor and Respondent are not a part of the same series of transactions or any composite transaction, and separate ledgers were being maintained for all the creditors. That only during the periods when the parties were intending to continue the business amongst them over the years the Balance Sheets for the preceding year been prepared with the consolidation of the closing balances. That, too, was based on a specific mutual understanding and on the premise of continuation, e.g. in the financial years 2015-16 and 2016-17. However, in the Balance sheet for the year ended March 31, 2018, the receivables and creditors are shown separately.

b. That there is no tripartite arrangement between the Respondent, the Corporate Debtor, and Man Sugar Independent, contracts for sale and purchase have been made with different entities. Further, as hedging by having the back-to-back sale of finished goods has been the inherent function of refining operations, the raw sugar purchase and white sugar sale transaction cannot be

termed as composite transactions.

6. The respondent, by his written submissions filed by diary No. 47 dated 10.01.2023 for CA No. 235/2018 and 236/2018, has submitted that the set-off claim is the admitted position of fact as regards the tripartite arrangement between the parties. The relevant part is extracted below for the sake of clarity:

The submissions of the respondent are broadly two-fold:

- a. *The transactions pertaining to the purchase of raw sugar by the corporate debtor from Man India and the sale of refined sugar by the corporate debtor to Man India and Man Sugar were so interconnected/interdependent that such transactions form part of a composite transaction; and*
- b. *The respondents are entitled to set off the amounts payable by them to the corporate debtor against the larger amounts due and payable by the corporate debtor to them.*

It is further clarified by the respondent that:

*“That the Corporate Debtor has a refining facility to refine raw sugar into white refined sugar, either for exports or for the domestic market. The EDFM Group entered into arrangements, from in or around 2014, with the Corporate Debtor for sale of raw sugar and purchase of refined sugar. The Respondent and the Corporate Debtor have entered into sale contracts for the sale of raw sugar from the Respondent to the Corporate Debtor and purchase contracts for purchase of refined sugar from the Corporate Debtor to the Respondent. Similarly, Man Sugar and the Corporate Debtor have entered into purchase contracts for the purchase of refined sugar from the Corporate Debtor. Essentially, the Respondent sells raw sugar to the Corporate Debtor which is then*

*refined and sold by the Corporate Debtor to either the Respondent for sale in the domestic market or exported to Man Sugar.*

a. *For every raw sugar sale contract executed between the Corporate Debtor and the Respondent, a corresponding purchase contract was executed for the resultant refined sugar between the Corporate Debtor and Man Sugar or the Respondent.*

b. *It was agreed between the parties that the raw sugar would be sold by the Respondent to the Corporate Debtor on credit basis and the Corporate Debtor would pay the consideration for the raw sugar to the Respondent only after selling the refined sugar to Man Sugar or the Respondent.*

c. *for the purpose of these tolling arrangements, the price of the white sugar payable to the Corporate Debtor from Man Sugar would take into consideration (i) the price of the raw sugar payable to the Respondent from the Corporate Debtor, and (ii) the tolling cost incurred by the Corporate Debtor. In effect, the price of the raw sugar payable to the Respondent from the Corporate Debtor along with the variable costs incurred by the Corporate Debtor would equal the price of the white sugar payable to the Corporate Debtor from Man Sugar or the Respondent.*

d. *It has always been the intention and understanding between Man Sugar, the Respondent and the Corporate Debtor that the transactions arising from the abovementioned sugar sale and purchase contracts form part of one composite transaction for the sale and purchase of sugar (raw and refined) between Man Sugar, the Respondent and Corporate Debtor.*

e. *To secure the amounts due and payable by the Corporate Debtor to the Respondents, various deeds of hypothecation were executed between the Corporate Debtor and Man India wherein the raw as well the refined sugar was hypothecated in favour of the Respondents. Separate deeds of hypothecation were executed for*

*separate raw sugar sale contracts.*

*f. To corroborate the intention of the parties to treat the aforesaid as a single series of transactions, it is most pertinent to note the accounting treatment of the payables in the books of the Corporate Debtor. For the years 2015-2016 and 2016-2017, audited accounts of the Corporate Debtor clearly show a net balance payable (as trade payable) to the Respondents after setting off the amounts receivable by the Corporate Debtor, annexed and marked as Annexure - "B" (Colly) are copies of the Balance Sheets of the Corporate Debtor for the years 2015-2016 and 2016-2017.*

*g. In addition to the above, combined ledgers were exchanged between the parties for the aforesaid tolling arrangement. Such ledgers have already been placed on record by Man India in its Interim Application. However, for the sake of convenience of this Hon'ble Tribunal, hereto annexed and marked as Annexure - «C» are the prints of email and ledger exchanged between the parties.*

*h. Additionally, vide an email dated January 20, 2018, addressed by the Corporate Debtor to the Respondents, inter alia, sharing the ledger for reconciliation of accounts. The email along with the ledger shared between the parties, establish that net balances were maintained to ascertain the amounts payable to the Respondents after setting off the amounts receivable by the Corporate Debtor, annexed and marked as Annexure-"D" are the prints of email dated January 20, 2018, along with the ledger exchanged between the parties.*

7. It is further stated by the respondent that:

- i. The argument of the Resolution Professional that the Code does not contemplate netting off during CIRP is not in consonance with the provisions of the Code, which

contemplates and specifically provides for a “set off” as the claim form required to be filed by an operational creditor makes specific provisioning for “mutual debits, credits, mutual dealings and set off”. In the claim form filed by the respondents, requisite information pertaining to the set-off was, in fact, filled in.

- ii. The code cannot be interpreted and applied in isolation to all other laws, particularly that of contracts; when parties contractually agree to certain claims, they are bound by the same, and when net liability is to be ascertained, the intention of the parties has given an effect to.
- iii. The Resolution Professional is bound by the books of the Corporate Debtor and cannot at his whim reopen the same to rewrite contractual arrangements or change the accounts of the Corporate Debtor, which have been finalised/reconciled after discussions between the Corporate Debtor and the Respondents and undo customary practices to suit his interpretation.
- iv. Were the Resolution Professional permitted to plead that the transactions between Man Sugar, Man India and the Corporate Debtor were not interconnected, the same would amount to a unilateral material alteration in the contractual arrangement between the parties, which is contrary to settled principles of the Indian Contract Act, 1872, particularly Section 62 thereof.



- v. The contention of the Resolution Professional that though the regulations pertaining to liquidation provides for expressed provisions for set-off, there is no such provision for the Resolution Professional, an incorrect interpretation of the code as the express provisions for the liquidator to give set-off cannot in any manner be construed to mean that the Resolution Professional is not bound to give the effect of a set off on the books of account of a corporate debtor.
- vi. The contention that giving any set-off to the respondents would mean giving preference over other creditors is fraud because by acknowledging the set-off, the RP is not making any payment to the respondents, and the books of the corporate debtor already reflect set off, which needs to be given effect to because of the binding contractual arrangements. The concept of equitable setoff is founded on the fundamental principle of equity, justice and good conscience.

8. The respondent has submitted that the respondent has filed claim Form-1 against Corporate Debtor, claiming an amount aggregating to Rs. 159,34,95,971/- which included the principal amount of Rs. 150,48,45,064/- and interest of Rs. 8,86,50,907/-. Further, the respondent, in response to a request made by the applicant, has furnished copies of documents in support of its claim vide email dated 27.06.2018. To the above, the respondent received a letter dated 14.08.2018, wherein the interest component of the

claim has been rejected by the applicant and admitted an amount of Rs. 122,12,12,208/-, disregarding the practice of charging interest between the parties.

9. Further, it is submitted by the respondent that the applicant has deducted the amount on grounds such as the supply of short raw sugar by the respondent, price difference claimed for raw sugar supplied under Seabee Vessel & TRQ supplied by the respondent, the excess amount paid by the respondent to M/s Liladhar Pasoo. It is stated that the respondent reserves its right to challenge the arbitrary action of the applicant for reducing its claim, and the contents of the letter dated 17.10.2018 addressed by the applicant, interalia confirms the tripartite arrangement between the parties.

10. We have heard the learned counsel for the parties and perused the records carefully.

11. We have perused the deed of hypothecation by Uniworld Sugars Private dated 31.03.2017 in favour of E D & F Man Commodities Private Limited. The very fact that the purchase of raw sugar and sale of refined sugar to MAN India/ MAN UK form a single series of transactions is also apparent from the following extracts from the Deed of Hypothecation. (page 8 of diary no. 124 dated 24.01.2019)

*“Pursuant to the terms of the Sale Contracts, USL has requested MAN India and MAN India has agreed, to sell the Raw Sugar to USL on credit basis and the payment for such Raw Sugar will be made by USL from the sale proceeds of the Refined Sugar in the manner stated herein. The payment obligation of USL towards MAN India for purchase of raw sugar is also, intended to be secured by hypothecation by way of a floating charge on the Hypothecated Assets (as defined below), to be created under the terms hereof.*

*USL hereby unconditionally and unequivocally agrees to credit proceeds generated from the sale of Refined Sugar ("Sale Proceeds") in any one of its bank account with State Bank of India, New Delhi or RABO Bank, Mumbai or IDBI Bank, New Delhi ("Bank Account"). Sale Proceeds received in the Bank Account shall first be utilised towards payment of the Outstanding Amount owed by USL to MAN India under the sale Contracts. Accordingly, within 1 day of receipt of the Sale Proceeds in the Bank Account, USL shall intimate MAN India of such receipt and USL shall within 2 days of the receipt of Sale Proceeds transfer to MAN India such part of the Sale Proceeds as is equivalent to the Outstanding Amounts payable by USL to MAN India.*

*If the value of Hypothecated Assets or proceeds derived by MAN India after the sale of Hypothecated Assets pursuant to this clause 5 ("Enforcement Proceeds"), exceeds the Outstanding Amount, the difference between the two will be paid by MAN India to USL, after deduction of any sum payable by USL to MAN India under this Deed.*

*(Emphasis Supplied)*

### **Security**

*"In consideration of MAN India selling the Raw Sugar to USL on credit terms, USL as legal and beneficial owner of the Hypothecated Assets, hereby hypothecates and creates security by way of a floating charge upon the Hypothecated Assets, in favour of MAN India."*

### **Sale of Refined Sugar:**

*4.1. USL confirms, agrees and undertakes that in fulfillment of its advance, license obligations it has agreed to sell the Refined Sugar to MAN UK.*

*4.2. USL hereby unconditionally and unequivocally agrees to*

*credit proceeds generated from the sale of Refined Sugar ("Sale Proceeds") in any one of its bank account with State Bank of India, New Delhi or RABO Bank, Mumbai or IDBI Bank, New Delhi ("Bank Account"). Sale Proceeds received in the Bank Account shall first be utilised towards. payment of the Outstanding Amount owed by USL to MAN India under the Sale Contracts. Accordingly, within 1 day of receipt of the Sale Proceeds in the Bank Account, USL shall intimate MAN India of such receipt and USL shall within 2 days of the receipt of Sale Proceeds transfer to MAN India such part of the Sale Proceeds as is equivalent to the Outstanding Amounts payable by USL to MAN India.*

*(Emphasis Supplied)*

12. It is also seen from the following extract from the Deed of Hypothecation (page 13 of written submission by diary no. 124 dated 24.01.2019) under the head "Statutory Payments" that only one party, i.e., the corporate debtor USL has been mandated to bear and pay all present and future statutory dues clearly indicating that the agreements between the parties have created composite transactions having two limbs of sales and purchases and not two separate transactions for purchases and sales, whereby the parties involved would have borne the liability of paying taxes relating only to their transactions.

*"STATUTORY PAYMENTS:*

*USL hereby agrees that it shall bear and pay all present and future statutory dues, stamp duty, registration charges, and applicable taxes which may be payable in connection. with the acceptance, delivery, performance or enforcement of this Deed or any other document executed /entered into in relation to this Deed or any Sale Contracts. USL agrees to Indemnify and keep*

*MAN India indemnified and hold it harmless, at all times, against any losses, costs, charges, expenses and liabilities including penalties required to be paid or already paid, by MAN India, resulting from delay or omissions on the part of USL to pay any such statutory dues, registration charges, applicable taxes. It is agreed between the Parties that the cost of creation of hypothecation on this Deed of Hypothecation shall be borne by MAN India.*

*(Emphasis Supplied)*

13. We have also gone through the ledger account in the books of Uniworld Sugars Private Limited (Gandhidham) (at page 65 of the written submission filed by Diary No. 47 dated 10.01.2023), showing a closing balance of Rs. 74.41 Crores as on 31.03.2017. A similar account for the period 01.04.2017 to 31.12.2017 also shows the same amount of Rs. 78.60 Crores as on 31.12.2017 (page 97 of written submission filed by Diary No. 47 dated 10.01.2023) as payable to the respondent. It is noted that the netting has been done by the Corporate Debtor itself in its books of accounts, and the other incidental charges are also taken into account while determining the final amounts payable. The case in favour of netting off is strengthened by the fact that the purchases of raw sugar and the corresponding sales of refined sugar is almost entirely between the applicant and the respondents only.

14. We have carefully gone through the Tolling Contracts and Job work Contracts (page 187 of CA No. 236/2018, volume II 01.10.2018) to understand the structure of the transactions entered into by the parties. The Tolling Contract between the respondent E D & F Man India and the applicant-Uniworld Sugar (USL) has two parts. The first part relates to raw sugar, and the second part relates to white refined sugar. In the first part, it is

stated that the respondent will deliver raw sugar to USL for Tolling into white sugar and the terms with regard to quantity, quality delivery period, etc., are clearly mentioned. In the second part, it is mentioned that USL will deliver white refined sugar to respondents in terms of quantity, quality, delivery period etc. are mentioned. It is noted that an agreement dated 07.09.2015 (page 217 of Annexure A-7 to the application) contends the narrations as below:

*“As mutually agreed, we hereby confirm that the quantity of white to be delivered by USPL under job work contract to be adjusted against the USPL’s purchase of white sugar from MAN and since it is a contra delivery there will not be any physical execution/movement of goods.*

*USPL agrees to accept MAN’s sale invoice (for 200 mt) against the corresponding contract and pay as per contract terms. Similarly, USPL will raise job work fees invoice on MAN and it will be paid by MAN as per the contract terms.”*

**(Emphasis Supplied)**

15. We have noted that the “trade payables” for the financial years ending on 31.03.2015, 31.03.2016 and 31.03.2017, as per the audited balance sheet of the corporate debtor, stood at Rs. 87.31 Crores, 87.1 Crores and Rs. 69.30 Crores, respectively (page 129 & 165 of written submissions filed by diary no. 124 dated 24.01.2019).

16. It is also noted that “trade payables” featured in the financial statement for the financial year 2015-16 and 2016-17 (attached as Annexure B-2 of the application) are netted off figures of purchases and sales.

17. The copies of emails and ledgers exchanged between the accounts

department of the corporate debtor to ED & F India attaching the statement of accounts copies as on December 2017, have been considered. One relevant extract from the above-referred communication suggesting 'reconciliation' is as below:

*"From: santoshsingh [mailto:santoshk.singh@uniworldsugars.com]  
Sent: Wednesday, January 03, 2018 2:10 PM  
To: 'Nilay Mehta (IND, Sugar)'  
Cc: 'Sanghratan Boudh'  
Subject: REQUIRED STATEMENT OF ACCOUNT UP TO DEC-2017*

*Dear Sir*

*Please find attach "ED&F India" account statement in the books of USPL for your reconciliation purpose, Also please provide your latest account statement up to Dec-2017 to us for the same purpose.*

*Thanks & Regards"*

18. The extract from another email dated 28.11.2017 (page 183 of submission by diary No. 124 dated 24.01.2019) clearly indicates that all individual transactions of purchase and sale are part of a "composite" transaction and reconciliation has been suggested by the finance executive of the corporate debtor in the said email to arrive at the final figure.

<i>Balance as per MAN India Books 31 July 17 DR</i>	<i>8807,63,044</i>	<i>USL Comment</i>
<i>Transactions to be done by MAN India</i>		
<i>DN against excise duty to be</i>	<i>(28,40,944)</i>	<i>USL cannot get credit in the</i>

<i>booked</i>		<u>absence of credit invoices, which was not provided to USL and period of availing Cenvat has expired. EDF should post these entry</u>
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*(Emphasis Supplied)*

19. In view of the above, it is logical to infer that sale and purchase transactions between the parties to this application have been treated by the corporate debtor as composite transactions in the past, and there is no specific reason to treat those as separate transactions after the initiation of the CIRP. It is an admitted fact that in Form B, the respondent filed the claim of E D & F Man Commodities India Private Limited is Rs. 1,593,495,971/- and of E D & F Man Sugar Limited is Rs. 4,049,932.92, i.e., the amount payable to them from the sale of raw sugar but they have clearly submitted the information relating to the netting-off. The following Clauses in Form B under the head “Details of how and when debt incurred” need to be specifically noticed.

*7.8 Under the said Purchase Contracts, the operational creditor owes an amount of INR 702,553.196 to the corporate debtor.*

*7.10 Accordingly, the total amount being claimed from the corporate debtor is the aggregate of principal amount along with interest there i.e. INR 1,593,495,971 (without giving effect to the set off mentioned in paragraph 7.8).*

*(Emphasis Supplied)*

20. Before analyzing the merits of the claims by the respondent with regard to netting off amounts, the contention made regarding the lack of jurisdiction of this Bench to entertain the present application needs to be addressed. The



respondent has placed reliance on several decisions of the Hon'ble Apex Court in support of its contention that the remedy of recovery of debts, disputed or not, cannot be determined in summary proceedings, and the Code does not contemplate adjudication of any such nature by this Adjudicating Authority. In this context, we are of the view that this is not a case of recovery of debt as the amounts involved in the above-referred purchases and sales are not in dispute, but the issue at hand is to determine the applicability of correct accounting standards in determining the actual liability of the corporate debtor. We are of the view that such issues are linked to the resolution process of the corporate debtor and fall directly within the powers of this authority to adjudicate.

21. The nature of the business of the corporate debtor, as discerned from the various contracts before us, is the purchase of raw sugar from respondents and refining the same on a job work basis and selling it back to the exporter. It is noted that both ED & F Man and ED & F Sugar are part of the same group of companies along with ED & F Holding. The auditors report mentions under the head "Related party disclosure" names of the related party and the nature of the relationship as under

Related party disclosures as per IndAS-24 "Related Party Disclosures"((Para 31 of the affidavit dated 03.10.2022 by the Resolution Professional)

A. Names of the related parties and the nature of the relationship:

Investors in respect of which the company is a joint	<ul style="list-style-type: none"> <li>● Simbhaoli Sugars Limited(SSL)</li> </ul>
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venture	<ul style="list-style-type: none"> <li>● ED &amp; F Man Holdings BV, Netherland</li> <li>● Volcafe Pte Ltd, Singapore</li> </ul>
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Furthermore, the same Auditors' report on Uniworld Sugar Private Limited for the year ending on 31.03.2018 under the head "Notes forming part of the financial statement" suggests unified financial management among these three entities:

*Rabo Bank charged the excess interest amount on loan repayment from Joint Venture Partner, ED& F Man Sugar Ltd., UK against invoking corporate guarantee as per terms and conditions of loan agreement. As per discussion with management, company has made a claim of Rs. 79.87 lacs on the Rabo Bank being the excess interest charged on the foreign currency loan of the nature of packing credit. No confirmation has been received from Rabo Bank on refund the excess interest charged. (Para 39 of affidavit dated 03.10.2022 by the Resolution Professional)-*

22. It is further noted from the purchase contract placed before us that the sugar was being purchased for export, and delivery was to be made out against Excise Bond-CT1; in short, the transactions are controlled by strict Government laws. Special conditions in this regard, as mentioned in the purchase contract, are extracted below:

- a. It is expressly understood that the sugar being purchased is for Export, and delivery shall be made out against Excuse Bond-CT1.
- b. If, at any point of time, the Govt. of India imposes stock

holding limits on sugar, the buyer shall have the right at its sole discretion to cancel this contract and or defer, postpone or reduce the quantity of sugar to be purchased under this contract, without incurring any liability on any account whatsoever.

23. The contractual arrangement between the parties is understandably very precise partly because of the requirements of the mandatory Export provisions, and for every raw sugar sale contract executed between the corporate debtor and the respondent, a corresponding purchase contract exists for the sale of refined sugar between the corporate debtor and Man India/Man Sugar or the respondent. The prices mentioned in the transactions appear to have factored in various costs borne by the parties at different points of the composite purchase/Sale contract. The sale and purchase contracts are duly supported by various Deeds of Hypothecation. Each sale of refined white sugar is a “contra delivery” for the purchase of raw sugar by the corporate debtor, as mentioned in the agreement dated 07.09.2015 quoted above in para 11, and the Books of Accounts reflect this reality. The corporate debtor has, in fact, confirmed this composite nature of transactions by making an undertaking under the head “Sale of Refined Sugar” in the Deed of Hypothecation that “in fulfilment of its advance license obligations, it has agreed to sell the refined sugar to MAN UK.”

24. The payment terms also are rigidly formulated with the net payable amounts determined after apportioning various costs jointly incurred by the parties and accounting for debit notes raised by the parties.

25. Now, coming to the applicability of netting off of amounts, we note that it is not alien to IBC, as evident by the provisions of Regulation 29 for liquidation, which reads as below:

*“29. Mutual credits and set-off. Where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party. Illustration: X owes Rs. 100 to the corporate debtor. The corporate debtor owes Rs. 70 to X. After set off, Rs. 30 is payable by X to the corporate debtor.”-*

The argument of the applicant-Resolution Professional that the same concept cannot be extended to the Resolution Process in the absence of a specific Regulation to that effect is not logical. As is seen in the foregoing paragraphs, in the Books of Account of the Corporate Debtor, the purchase consideration for the purchase of Raw sugar by the Corporate debtor is set off against the Sale consideration of the refined sugar by the Corporate Debtor to arrive at the “Trade Payable” reflected in the Balance Sheet of the Corporate Debtor year after year. The Resolution Professional has claimed that the sale and purchase transactions have been separately reflected in the audit report for the financial year ending on 2017-18; It is seen that the auditors in para 42 under the head “notes forming part of the financial statements” has observed under: (Para 42 of the affidavit dated 03.10.2022 by the Resolution Professional).

*The company has been receiving raw sugar from ED& F Man Commodities India Pvt. Ltd. under various contracts. The balance confirmation from ED& F Man Commodities at the end of the financial year 2017-18 has not been received and accordingly*

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*the accounts are un-reconciled, particularly with reference to short supply of raw sugar under various raw sugar contracts, interest charged by it without any agreement to this effect, certain price difference claims etc.*

Thus, lack of reconciliation post-CIRP appears to be the real reason for recording sales and purchase transactions with the respondent separately in the financial statements of 2017-18.

26. Further, we find substance in the argument of the respondent that by adopting the netting off figures as the amounts payable/receivables, the Resolution Professional is not giving any preference to the respondent over other creditors as he is not making any payment to the respondent and only adopting the figures in the books of accounts of the corporate debtor.

27. By our order dated 24.01.2023, both the RP as well as the respondents were directed to clarify whether there will be any material change in the admission of the claim by the respondents under the Resolution Plan if netting off is allowed. In response, the SRA has clarified in his affidavit dated 25.01.2023 that:

*“6. That the Successful Resolution Applicant respectfully submits the amounts that would be recovered from the recovery applications C. A. 235/2018 and 236/2018 is unascertainable at our end, and whatever the amount will be, will be duly paid in compliance of Section 53. Since, the Hon'ble Bench has directed to quantify the sums payable pursuant to the affidavit submitted; if any sums are actually recovered from the said "Man group or EDF group," then the same will be payable to them only in compliance of section 53 of the code as they fall next in line under the waterfall mechanism as Unsecured Financial Creditor.”*

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28. Further, the respondent in its affidavit dated 07.02.2023, has submitted as under:

"It is, therefore, submitted that upon netting off the amounts and effecting Setoff, the following will be the net claims of the Parties:

**Man India**

*[Admitted Claim for sale of raw sugar] less [Amount payable towards purchase of refined sugar]*

*= Rs. 122,12,12,208 - Rs. 69,76,50,573*

*= Rs. 52,35,61,635/- payable by the Corporate Debtor to Man India*

*However, in view of the abovementioned clause of the hypothecation deed and also the fact that the contracts of sale and purchase between the three entities formed a single series of transactions, the balances between all three parties ought to be netted off. As a result, the aforesaid amount of Rs. 15, 56, 47, 464/- ought to be netted off from the amount payable by the Corporate Debtor to Man India as under:*

*[Amount payable by Corporate Debtor to Man India] - Rs. 15, 56, 47, 464/-*

*= Rs. 52,35,61,635 - Rs. 15, 56, 47, 464/-*

*= Rs. 36,79,14,171*

*In View of the above, it is submitted that if this Hon'ble Tribunal permits netting off/setting off of the balance, which it ought to, the claims of MAN India and Man Sugar against the corporate debtor would stand modified as under*

*Man India: Rs. 36, 79, 14, 171/-*

*Man Sugar : Nil*

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29. As recorded in our order dated 24.01.2023, the learned counsel for the respondent has stated that he has no objection to the disallowance of the interest by the Resolution Professional while considering the claim of the respondents.

30. As recorded in our daily order dated 30.01.2023, the learned counsel for the respondent has stated that he is not pressing his claim regarding the wrong deduction made by the RP.

31. In short, the sale and purchase transactions of the corporate debtor, a refinery of sugar, are almost entirely with the respondents-related parties and the entire business is geared towards export after refining sugar purchased from the respondent. This process itself is subjected to various controls of the Government, and there are export obligations of the corporate debtor under the various licenses issued by the Government in this regard. As is evident from the discussion in the aforementioned paragraphs, not only the sale and purchase transactions but also the financial transactions are closely intertwined. The corporate debtor is a 50-50 joint venture between ED & F Group and Simbhaoli Sugars Limited. The holding company, i.e., ED& F Man Holdings BV Netherlands, which is also a major unsecured creditor, is shown as a related party in the auditor's report. The Books of Accounts maintained by the parties, their internal communications and banking transactions clearly reflect the composite nature of the trading transactions. This is also evident from the audit reports of the corporate debtor for the financial year 2015-16 and 2016-17 and the auditor's note regarding the related party transactions

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and trade payables. As mentioned in the auditor's report for the year 2017-18 attached to the affidavit of RP dated 03.10.2022, after the initiation of CIRP, the balance confirmations from ED& F Man India were not received, and as a consequence, accounts of the party could not be reconciled. This appears to be the real reason for showing the purchase and sale transactions with the respondent separately in the statements as on 31.03.2018 in deviation from the accounting practice of earlier years, and the same cannot be relied upon by the Resolution Professional to show that the sale/purchase transactions are separately reflected in the audited Books of Accounts.

32. In the background of the above facts, we are of the considered view that netting off should be allowed in keeping with observations made in the foregoing paragraphs and especially in view of the treatment reflected in the books of accounts of the corporate debtor while determining the liability of the parties with regard to the purchase and sale of sugar. As on the date of initiation of CIRP, after allowing netting off, there is a net payable to the respondent in the accounts of the corporate debtor. Thus, the prayer in the present application for payment of Rs. 69.76 Crores to the corporate debtor plus interest cannot be acceded to. In the result, the application is dismissed and disposed of accordingly.

**CA No. 235/2018**

33. The present application is filed by the Resolution Professional of the corporate debtor seeking direction against the respondent to repay the corporate debtor an amount of USD 2197669.23 (equivalent to Rs. 15,05,40,000/-) and interest payment for the delayed period on this

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CA No. 235/2018 & 236/2018  
in  
CP (IB) No.120/ALD/2017

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outstanding amount calculated @ 9.75 % p.a. which in aggregated amounts to USD 135,025 (equivalent to Rs. 91,57,396/-), both together amounting to USD 2,332,694 (equivalent to Rs. 159,697,396/-).

34. It is submitted by the applicant that on the date of commencement of CIRP, the corporate debtor has overdue outstanding from certain customers including from the respondent No. 1 for an amount of USD 2,197,669 (equivalent to Rs. 15,05,40,000/-) against the export sales of white sugar that took place during the period from August 2016 to August 2017. The applicant has requested the respondent for payment of the due amounts through emails dated 13.04.2018, 16.05.2018 and 11.06.2016. The respondent has replied vide its letter dated 31.07.2018, stating that their claim amount of Rs. 66,545,286/- vide claim form dated 07.07.2018 and their claim amount of Rs. 4,049,933/- vide claim form dated 11.07.2018 should be permissible to be set off against the overdue amount recoverable by the corporate debtor from respondent No. 1.

35. It is averred by the applicant that there was no expressed agreement between the corporate debtor and respondent No. 1 with regards to set off of the debit balances with the credit balances. Further, there is no such provision under the Code.

36. The respondent has filed its reply vide diary no. 959 stating that the claim of the respondent and another group entity, i.e. ED& F Man, arising out of one composite transaction and as per the mutual understanding (Tripartite Arrangement), the parties are maintaining a running ledger between them, and only the net payable amount has been reflected in the respective

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accounts. Further, the respondent has the right to claim set off under the Code. The same is evident from the claim Form providing information pertaining to mutual credits/debits between the parties herein. Further, it is stated that the respondent is not liable to pay any amount, and the ED& F M group is entitled to claim set off their claims as against the claims of the applicant.

37. We have heard the learned counsels for the applicant and the respondent and carefully perused the record available.

38. For reference purposes, the details of how and when the debt was incurred, mentioned in Form B submitted by the respondent, are extracted below:

**Details of Transactions on the account of which the debt was incurred and fell due**

*7.8 As on Insolvency Commencement date, the Corporate Debtor has not made any payment to the Operational Creditor and as on Insolvency Commencement Date an aggregate of the outstanding vendor payment along with Outstanding Detention Cost i.e., INR 4,049,932.92 is due from the corporate debtor to the operational creditor.*

39. In this context, the relevant part of the reply letter dated 31.07.2018 sent by the respondent is extracted below:

*“5. It is evident from the contents of the Demand Letter when read parallelly with the EDFM Claim Forms (in particular Point 8*

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*thereof), that the demand made by you under the Demand Letter and the claim submitted by EDFM Sugar under the EDFM Claim Forms, are founded on a series of interconnected transactions, the nature and circumstances surrounding which render them to be regarded in a collective and conjoint manner, as forming part of a same larger transaction between EDFM Sugar and USL. Therefore, any amount that may be claimed by "USL from EDFM Sugar in connection with the aforesaid transactions would, legally and/or in equity, be permissible to be set off against the amount claimed under the EDFM Claim Forms."*

40. It is noted that the applicant has filed another CA No. 236/2018 against ED& F Man India, which is a group company of the respondent herein. Further, it is stated that the instant applicant can be acceptably adjudicated only when the same is heard together with CA No. 236/2018.

41. As is apparent from the various extracts from the documents relating to the applicants and ED& F Man India & ED&F Sugar UK in the discussion in IA No. 236/2018, the issues for adjudication runs along the same lines to avoid repetition only the very critical extracts will be repeated in our discussions below and we will be making cross reference where discussions in CA No. 235/2018 above.

42. For proper adjudication of the present application, the Deed of Hypothecation by the corporate debtor in favour of ED & F Man Commodities India Private Limited is to be seen in the light of present facts and circumstances. The same is extracted below:

**Sale of Refined Sugar:**

*4.1. USL confirms, agrees and undertakes that in fulfillment of its advance. license obligations it has agreed to sell the Refined*

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*Sugar to MAN UK.*

*4.2. USL hereby unconditionally and unequivocally agrees to credit proceeds generated from the sale of Refined Sugar ("Sale Proceeds") in any one of its bank account with State Bank of India, New Delhi or RABO Bank, Mumbai or IDBI Bank, New Delhi ("Bank Account"). Sale Proceeds received in the Bank Account shall first be utilised towards payment of the Outstanding Amount owed by USL to MAN India under the Sale Contracts, Accordingly, within 1 day of receipt of the Sale Proceeds in the Bank Account, USL shall intimate MAN India of such receipt and USL shall within 2 days of the receipt of Sale Proceeds transfer to MAN India such part of the Sale Proceeds as is equivalent to the Outstanding Amounts payable by USL to MAN India.*

43. We note that in the books of accounts of the applicant-corporate debtor for the Financial Years 2015-16 and 2016-17, the net balance payable is shown as "trade payables" to the respondents and the same is arrived at after setting off the receivables by the corporate debtor. Moreover, the combined ledgers exchanged between the corporate debtor and the respondent showing netted off amounts are also annexed to the combined reply filed by the respondent in CA Nos. 235/2018 & 236/2018, along with emails in Annexure D.

44. It may be noted that in the Deed of Hypothecation under the head 'Statutory Payments', only the corporate debtor is mandated to bear and pay all the present and future dues relating to the Deed of Hypothecation support the claim of composite nature of the transactions and not separate transactions of purchase and sales in which case the parties involved would have borne the liability of paying taxes separately relating to their part of their

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transactions,

45. We also note that both ED& F Man and ED& F Sugar are part of the same group of companies along with ED& F Man Holdings BV Netherland, which is shown as a related party in the auditor's report in the case of the corporate debtor, as mentioned in para 21 above.

46. After going through the contracts, Books of Accounts, audited financial statements, extracts from banking transactions, and auditor's report, especially all related parties, we are of the considered view that the purchase and sales transactions of the corporate debtor, which is a 100% export unit, are "composite transactions". As the facts of the present case are almost identical and closely linked with CA No. 236/2018, we have no hesitation in holding that the purchase and sales transactions should be netted off in respect of the present respondent, i.e. ED& F Sugar.

47. In the result, netting off is allowed and after allowing the same, there is nothing payable by either party to each other and hence, the prayer in the present application for re-payment of amounts USD 2,332,694 (equivalent to Rs. 159,697,396/-), to the corporate debtor, inclusive of interest, cannot be acceded to, and the application is dismissed and disposed of accordingly.

Sd/-

**(Subrata Kumar Dash)**  
**Member (Technical)**

March 20, 2023

PB/ASH

Sd/-

**(Harnam Singh Thakur)**  
**Member (Judicial)**