

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

IA(IBC)/2302(CHE)/2023

In

IA(IBC)/140(CHE)/2023

In

IBA/1017/20119

(filed under Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules 2016)

Jain Irrigation Systems Limited,

Having its Registered Office at
Jain Plastic Park, NH No.6 Bambhori,
Jalgaon, Maharashtra – 425 001.

Represented by its Executive Senior Vice President,
Dr.Stephen Arul,

... Applicant

Vs.

Mr.Anurag Goel,

Liquidator,
Shree Ambika Sugars Limited,
Having his Registered address at,
Eldorado, 5th Floor, 112, Nungambakkam High Road,
Madras, 34 Akkam High Road,
TN- 600 034.

And

IA(IBC)/140(CHE)/2023

In

IBA/1017/20119

(filed under Section 42 of IBC, 2016 r/w Rule 11 of NCLT Rules 2016)

Jain Irrigation Systems Limited,

Having its Registered Office at
Jain Plastic Park, NH No.6 Bambhori,
Jalgaon, Maharashtra – 425 001.

Represented by its Executive Senior Vice President,
Dr.Stephen Arul,

... Applicant

Vs.

Mr.Anurag Goel,

Liquidator,

Shree Ambika Sugars Limited,

Having his Registered address at,

Eldorado, 5th Floor, 112, Nungambakkam High Road,

Madras, 34 Akkam High Road,

TN- 600 034.

... Respondent

Order Pronounced on **04th July 2024**

CORAM

SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Applicant : Mrs.Manjula Devi, Advocate
Mr.Mukunth, Advocate

For Respondent : Mr.Ranghasayee, Advocate

For Successful
Scheme Proponent : Mr.Avinash Krishnan Ravi, Advocate

COMMON ORDER

1. IA(IBC)/2302(CHE)/2023

1.1. This Application has been filed under Section 60(5) of IBC, 2016 by Jain Irrigation Systems Limited against the Liquidator of the Corporate Debtor viz. Shree Ambika Sugars Private Limited seeking directions to file additional documents in the typed set of IA(IBC)/140(CHE)/2023.

1.2. It is stated that the Applicant is one of the Operational Creditors of the Corporate Debtor had filed an claim before the liquidator which was rejected by the Liquidator. Against which the Applicant preferred an application IA(IBC)/140(CHE)/2023 wherein

*IA(IBC)/2302(CHE)/2023 in IA(IBC)/140(CHE)/2023 in IBA/1017/2019
And IA(IBC)/140(CHE)/2023 in IBA/1017/2019
Jain Irrigation Systems Limited Vs.
RP of Shree Ambika Sugars Private Limited.*

the Applicant had failed to add some important documents in the typed set.

1.3. It is stated that the employees of the Applicant Company who were looking in to this case regarding transactions with corporate Debtor had left the company. Moreover, due to closure and shifting of Applicant offices in various places in Tamil Nadu as well as in Maharashtra many of the documents were lost in transit and they have traced it only now and praying to take the same in to record in the typed set of .

1.4. Ld. Counsel appeared for the Respondent submitted this instant application and IA(IBC)/140(CHE)/2023 are infructuous as the Scheme filed under CP(CAA)/27(CHE)/2023 in CA(CAA)/11(CHE)/2023 has been approved by this Tribunal vide order dated 12.01.2024.

2. IA(IBC)/140(CHE)/2023

2.1. This Application has been filed under Section 42 of Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016 by Jain Irrigation Systems Limited against the Resolution Professional of the Corporate Debtor viz. Shree Ambika Sugars Private Limited seeking to award the claim amount with interest as per the Form-C made before the Liquidator and direct the Respondent / Liquidator to accept the claim of the Applicant.

2.2. It is stated that the Applicant is one of the Operational Creditors of the Corporate Debtor. The Applicant had entered into an agreement with the Corporate Debtor on 29.01.2010 for the supply of installation of the drip irrigation systems to the registered cane growers of the Corporate Debtor.

2.3. As per above contract the Applicant had supplied drip irrigation systems based on the list of the beneficiaries given by the Corporate Debtor and had raised invoices from time to time for the same. It is stated that on the dated of agreement the Corporate Debtor ensured that it was their responsibility of ensuring the payment due by letter dated 29.01.2010.

2.4. It is stated that some of the sugarcane growers of the Corporate Debtor had not made any payment on the invoices raised by the Applicant. In turn, the Applicant had written a letter to the Corporate Debtor regarding the outstanding amount. After that the Applicant had several personal meetings with the Corporate Debtor regarding the outstanding amount.

2.5. It is stated that the Applicant had sent letters dated 02.04.2016, 03.04.2017, and 03.04.2018 on confirmation of outstanding balance to the Applicant. As a result, the Corporate Debtor had made a payment on 22.02.2017. After that the Corporate Debtor requested further time to make the next

payment. But no payment has been released by the Corporate Debtor thereafter.

2.6. It is stated that the Corporate Debtor had defaulted to pay the balance amount of Rs.8,35,99,757/- and interest at 12% amounting to Rs.12,99,82,707/-. The total amount due including interest as on 30.09.2019 is Rs.21,35,82,464/-. Meanwhile, CIRP in respect of Corporate Debtor has been initiated by this Tribunal on 18.12.2019 and the Respondent herein was appointed as the Resolution Professional (RP). Pursuant to that the Applicant had filed a claim in Form-B before the RP which was rejected by the RP stating that the documents submitted were insufficient.

2.7. Against the above decision of the RP the Applicant had preferred IA/1264/2020. While the said application was pending, this Adjudicating Authority has passed an order to liquidate the Corporate Debtor on 13.07.2022 and the Applicant was directed to file the claim with the Liquidator. Complying the same the Applicant had filed the claim in Form-C dated 13.07.2022 with the Liquidator, which was rejected by the Liquidator stating that the claim is non-tenable claim for the non-relevance of document filed in support of the claim.

2.8. It is stated by the Applicant that as per clause D of the Agreement, which deals with the amount payable to the Applicant, is to be arrived after deducting the subsidy component from the

project cost. The subsidy amount was Rs.35,750/- per hectare. As per sub-clause 4 of Clause B states that it is duty of the Corporate Debtor to collect all the required documents for availing subsidy from the Government and hand it over to the Applicant.

2.9. It is stated that as per clause D 80% of the amount payable would be paid by the Bank and the remaining 20% be paid 45 days after the installation of drip irrigation system. The Corporate Debtor has to tie up with the bank for sanctioning term loans for the farmers as per subclause 5 of Clause B. Further it states that if the beneficiary is ineligible for subsidy, the Corporate Debtor shall pay the subsidy component due to the Applicant by recovering from the cane proceeds within 2 months after completion of cane supply.

2.10. It is stated that a combined reading of letter dated 29.01.2010, Clause D read with subclause 5 of Clause of the Agreement dated 29.01.2010 will show that one of duties of the Corporate Debtor was to co-ordinate with the banks for timely payment to the Applicant. In case the credit from the bank is not sanctioned to the beneficiary viz. farmer then it shall be the responsibility of the Corporate Debtor to repay the Applicant for the invoices raised. It is stated that the above-mentioned facts or not considered by the Respondent while rejecting the Applicant's claim.

2.11. *Per contra*, the Respondent in its reply stated that the Corporate Debtor and the Applicant herein entered into an agreement on 29.10.2010 to promote the drip irrigation system in two locations of the farmer's field of the Corporate Debtor.

2.12. It is stated that the role of the Corporate Debtor was to identify farmers and land holdings suitable for growing sugarcane crops and furnish it to the Applicant herein for study. After survey of the Applicant's officials the Corporate Debtor was to collect the documents from the farmers and hand it over to the officials of the Applicant herein to register with the TANHODA scheme.

2.13. It is stated that the Applicant herein was to prepare a design of the drip system and prepare estimates to enable the Corporate Debtor to facilitate loan arrangement for the non-subsidized portion of the costs payable. The Corporate Debtor was to obtain an 'In-principle Loan Sanction Letter' and work order and submit it to the Applicant herein. On receiving the same the Applicant was to commence the installation of drip irrigation. However, the Applicant herein has supplied the drip irrigation system to the farmers who could not avail the bank loans, even without receiving the 'In principle Loan Sanction Letter', based on the request and consent of the farmers to recover the drip costs from their cane proceeds as and when they supply the cane to the factory.

2.14. The Corporate Debtor has not provided any guarantee to this transaction or payments to the Applicant or the farmers. In any case of dispute, the Agreement had an arbitration clause. However, in no point in time the issue was raised to the Corporate Debtor nor was the arbitration clause invoked over these years.

2.15. It is stated that the letter dated 29.01.2010 is only an interim credit facility as the Corporate Debtor is in the final phase of securing a dedicated line of credit from a Bank to finance the loan requirements of the individual farmers. That interim financing was only provided until a line of credit was available. It is stated that the said interim financing has been provided with a clause stating that the monies received by the Corporate Debtor as part of the interim financing shall be returned back upon the line of credit being received from the banks. Therefore, the intention here is clear that the interim finance was not meant for an extend period of time and was not to be construed as a never ending obligation on the Corporate Debtor. Further, Corporate Debtor has already fulfilled its obligation to obtain an 'In-principle loan sanction letter' from the Banks.

2.16. It is stated that as per Clauses 1 to 4 of Section D of the Agreement there is no liability on the Corporate Debtor to make payment on the said clauses. Further, it is stated that the letter dated 25.09.2014 pointed out by the Applicant is issued under the

letter head of group of company of the M/s. Thiru Arooran Sugars Limited. The said letter clearly shows that the Corporate Debtor has no outstanding payments to the Applicant herein.

2.17. In the letter dated 25.09.2014 the bifurcation of transactions between the Applicant herein and M/s Thiru Arooran Sugars and the Corporate Debtor, has been mentioned in the table attached along with the said letter. The same has been given separately unit wise, including two units of the Corporate Debtor. As per the table the total amount as per the invoices (Farmer contribution) for both the units of the Corporate Debtor herein amounts to Rs.8,95,02,000/-. It is further to be noted that the amounts recovered from the farmers, yet to be released to the Applicant herein from both units of the Corporate Debtor amounts to (-)Rs.5,000/-, which is in the negative implying that an additional amount has been received by the Applicant. The total balance amount "to be collected from the beneficiary farmers by the Applicant" herein against the total invoices raised for both units as on 25.09.2014; amounts to only Rs.29,00,000/ -, which is not the liability of the Corporate Debtor and is relatively much lower than the alleged dues as claimed by the Applicant.

2.18. It is stated by the Respondent that vide letter dated 21.07.2020 the Respondent had clearly mentioned that the letter dated 29.01.2010 is merely an interim measure and had requested

the Applicant to provide further document in support of the Applicants claim for which the Applicant had not provided anything.

2.19. In the rejoinder the Applicant and reiterated its submissions and added that in any case, if the beneficiary is ineligible for subsidy, the Corporate Debtor shall pay the subsidy component due to the Applicant.

20.20. It is stated that as per Clause B(4) of the Agreement the Corporate Debtor has only the onus to collect all the documents and hand it over to the Applicant. It does not create any liability on the Corporate Debtor. Further, in the course of hearing on 01.02.2024 the Ld. Counsel for the Applicant submitted that this application is also infructuous as the Scheme filed under CP(CAA)/27(CHE)/2023 in CA(CAA)/11(CHE)/2023 has been approved by this Tribunal vide order dated 12.01.2024.

3. Heard the submissions of Ld. Counsel for both the parties and perused the documents on record.

4. In so far as the prayer in IA(IBC)/2302(CHE)/2023 is concerned, we find the reason stated by the Applicant that the relevant documents were lost and they have found it only now is considered by this Adjudicating Authority and the document filed in the said application are taken on record to the extent of its relevance. Accordingly, this application is **allowed** and disposed of.

5. In so far as the prayers regarding the application IA(IBC)/2302(CHE)/2023 is concerned, we would like to refer to relevant provisions regarding submission of claims during liquidation process in the IBBI Liquidation Regulation 2016,

“Regulation 17: Claims by operational creditors.

(1) A person claiming to be an operational creditor of the corporate debtor, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form C of Schedule II.

(2) The existence of debt due to an operational creditor under this Regulation may be proved on the basis of-

(a) the records available with an information utility, if any; or

(b) other relevant documents which adequately establish the debt, including any or all of the following –

(i) a contract for the supply of goods and services with corporate debtor;

(ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;

(iii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; and (iv) financial accounts.

S.No. 11 in Form-C requires the claimant to *“list out and attach the documents relied on in support of the claim.”*

Regulation 23: Substantiation of claims.

The liquidator may call for such other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim.”

6. From the above provisions it is duty of the claimants to attach the relevant documents with Form-C. It is also clear that the Liquidator finds the documents filed by the claimant is not

satisfying Regulation 17(2) he may call for additional evidences to substantiate the claim filed by the claimants.

7. The relevant clauses referred by the Applicant in the agreement dated 29.01.2010 is as follows,

B – SASL Scope of Involvement :-

1. Selection and identification of farmer as per the specifications with mutual consultation of both for about 5500 acres with permanent and continuous water supply throughout the year.
2. Facilitate purchase of drip irrigation and fertigation system in farmer's land of an aggregate extent of about 5500 acres during the year 2009 -10.
3. SASL shall employ their resources and take best efforts to ensure that a minimum of 5500 acres of land will be brought under drip installation during the period January 2010 – September 2010. In the event that due to circumstances beyond the control of SASL, the aforesaid target of 5500 acres is not met, then SASL shall not be bear liability of any nature to JISL nor any damages therefor whatsoever.
4. SASL shall arrange to collect all the required documents for availing the subsidy from the Government and hand over to JISL. SASL / JISL will also complete on-line registration of the farmer in the TANHODA website and obtain a registration number

for follow up later. SASL will down load the relevant work order from TANHODA site and issue the same to the JISL .

5. SASL proposes to tie up a dedicated line of credit with one or more reputed Banks in order to facilitate the smooth sanctioning of term loan for financing the individual farmers. SASL will make available the in-principle sanction letter from the bank, once a loan is sanctioned for a plot, to enable JISL to move the materials to the plot to initiate installation. SASL will coordinate with the Bank for timely payment to JISL.
6. SASL shall arrange to supply the required acid / cleaning chemicals to the farmers in time.
7. SASL shall provide the tentative monthly programme for the next three months during the opening of every month so as to help JISL to plan for the project execution.

D - Payment Terms :-

The amount payable to JISL by the Bank is arrived at after deducting the subsidy component from the project cost. Subsidy means the grant given under TANHODA scheme for promotion of installation of drip irrigation systems on sugar cane which is currently Rupees Thirty Five Thousand Seven Hundred and Fifty only (Rs.35750 -) per Hectare (the "Subsidy Amount").

1. JISL shall supply the materials on receipt of in-principle loan sanction letter from Bank and all documents as are necessary for obtaining the subsidy.
2. Bank shall pay 80% of the amount payable upon completion of supply of material by JISL which has to be certified by field staff of SASL.
3. JISL shall raise invoice on the farmers on completion of delivery of goods and Installation of the drip irrigation system.
4. Bank shall pay the remaining 20% of payable to JISL 45 days after completing the installation of drip system in the farmer's plot to be approved by SASL and execution of acceptance certificate.
5. JISL to directly follow up with the concerned office of the Government towards the collection of drip subsidy under the TANHODA scheme. SASL will not be responsible for any delay in the disbursement of subsidy by the Government. If a Beneficiary is ineligible for subsidy, SASL shall pay the subsidy component due to JISL by recovery from cane proceeds within two months after completion of cane supply.

For SHREE AMBIKA SUGARS LT.

Sub-clause ii in clause G of the agreement,

2. Amendments to this agreement can be done with mutual consent of SASL and JISL. This agreement can be terminated by any of the parties with a written notice of 60 days in advance. During the implementation of this scheme, if any dispute arises and the same is not settled amicably, it shall be referred to two arbitrators, one to be appointed by SASL and another by JISL, and an umpire shall be appointed by both the arbitrators in case of difference of opinion between the two arbitrators and decision given by the Umpire shall be final and binding on both the parties under the Arbitration and Conciliation Act, 1996.

8. Reading of the above clauses we find that as per clause B it is duty of the Corporate Debtor collect documents from beneficiary farmers to avail subsidy from the TANHODA Scheme and to arrange line of credit from Banks for sanctioning individual term loan for the beneficiary farmers. Further, the Corporate Debtor has to make available the "in-principle sanction letter" from the bank.

9. In the payment terms mentioned in the Clause-D it is stated that the bank shall pay 80% of the amount payable upon completion of supply of material by the Applicant and remaining 20% will be paid after 45 days completion of the installation. Further in sub-clause 5 of Clause D it is stated that the Corporate Debtor will not be responsible for any delay in the disbursement of subsidy and it will pay the subsidy component to the Applicant after 2 months from the cane proceeds. We find that nowhere in the above agreement states that the Corporate Debtor is responsible for the payment regarding invoices raised by the Applicant.

10. In the Pre-Agreement Offer letter dated 29.01.2010 issued by the Corporate Debtor to the Applicant it stated as follows,

This has reference to the agreement we have entered into for the design, supply and implementation of drip system in our cane command areas. We are in the final phase of securing a dedicated line of credit from a Bank to finance the loan requirements of individual farmers. Till such time the line of credit is in place, as an interim measure, we will undertake the responsibility of ensuring the payment due to your company as envisaged vide clauses 1,2,3 & 4 under section D of the agreement aforesaid :

Once the line of credit sanctioned by the Bank is in place, the payment procedure as envisaged in the agreement will come into force. Besides, regular loan applications will be obtained from the concerned beneficiaries even in cases where we have already funded as part of the interim arrangement and submitted to the concerned Bank for necessary processing and disbursement. Monies received by your company in respect of those applications, for which we have already made payment to your company, shall be returned back to us on receipt of such payments from the bank.

11. In the aforesaid letter, it is noticed that the Corporate Debtor had clearly mentioned that 'the line of credit is in place as an interim measure. Once the line of credit sanctioned by the Bank the payment procedure in the agreement will come to force. It not denied by the Applicant that the Corporate Debtor has fulfilled its obligation by 'In-principle loan sanction letter' from the Banks.

12. Moreover, it is seen that the Respondent vide letter dated 21.07.2020, asked the Applicant to provide additional documents as per Regulation 23 to substantiate the claim, which was not complied by the Applicant.

13. In addition to all we see that the Corporate Debtor has been completely taken over by SNJ Distillers (P) Ltd by way of Scheme during liquidation of the Corporate Debtor. It is pertinent to note that the Applicant had not filed any objection to the Scheme proposed by the SNJ Distillers (P) Ltd during hearings of the Scheme. This Adjudicating Authority vide order dated 12.01.2024 had approved the aforesaid Scheme. It is also noticed from the Scheme that the pay-out to Operational Creditors (others) is only Rs.19.77 lakhs.

14. In view of the above discussions we are of the considered opinion that the Corporate Debtors liability to the Applicant is in interim nature and the liability extinguished when the Corporate Debtor has fulfilled its obligation by 'In-principle loan sanction letter' from the Banks. Since, the Corporate Debtor was completely taken over by the SNJ Distillers (P) Ltd by way of Scheme during Liquidation the principle of "clean slate" will become applicable to the Corporate Debtor. In such circumstances this outcome of this application will not bear any fruits to the Applicant.

15. Accordingly, IA(IBC)/140(CHE)/2023 stands **dismissed** and disposed of.

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)