

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Shafi Siddiqui
& Jawad Akbar Sarwana JJ

High Court Appeal No.171 of 2021

New Dadu Sugar Mills (Pvt.) Ltd.

v.

Sindh Sugar Corporation Ltd. and Another

and

High Court Appeal No.172 of 2021

New Thatta Sugar Mills (Pvt.) Ltd.

v.

Sindh Sugar Corporation Ltd. and Another

Appellant in HCA No.171/2021:	New Dadu Sugar Mills (Pvt.) Ltd., through Mr Chaudhry Atif Rafiq, Advocate
Appellant in HCA No.172/2021:	New Thatta Sugar Mills (Pvt.) Ltd. through Mr Chaudhry Atif Rafiq, Advocate
Respondent No.1 in: HCA Nos. 171 and 172/2021:	Sindh Sugar Corporation Limited. Assistant A.G., Mr Abdul Jalil Zubedi, Advocate
Respondent No.2: HCA Nos. 171 and 172/2021:	Mehran Sugar Mills Ltd., Nemo Nemo Dr. Waseem Iqbal, Official Assignee
Date of hearing:	19.10.2023
Date of decision:	15.11.2023

J U D G M E N T

Jawad A. Sarwana, J.: Through these two appeals, the Appellants (auction purchasers), New Dadu Sugar Mills (Pvt.) Ltd., in HCA No.171/2021 and New Thatta Sugar Mills (Pvt.) Ltd. in HCA No.172/2021, have impugned the learned Single Judge's Interim Order passed on 07.09.2021 in JCM No.15 of 2006. Since the facts of both appeals are similar, we shall dispose of the same by this common judgment.

2. The brief facts/history of the appeals are that on 30.06.2006, Sindh Sugar Corporation Ltd. ("Respondent No.1 Company") filed JCM No.15/2006 under Section 309 of the Companies Ordinance, 1984 and for its winding up under Section 305 of the Companies Ordinance, 1984. The Respondent No.1 Company's assets included two factories, namely "Dadu Sugar Mills" and "Thatta Sugar Mills".

3. During proceedings, the project/unit, "Dadu Sugar Mills", was put to auction thrice between 2007 and 2008 and, eventually, the bid of Naudero Sugar Mills (Pvt.) Ltd. (company name changed to "Dadu Sugar Mills (Pvt.) Ltd.") of Rupees Ninety Million (PKRs.90,000,000) was accepted as recorded in the Official Assignee's ("OA") Reference ("Ref.") No.10/2008 vide the Court's Order dated 23.06.2008. By 2009/2010, the Court confirmed the sale and execution of the sale deed by the CEO of Naudero Sugar Mills (Pvt.) Ltd., Mr. Anver Majid.¹

4. Similarly, the project/unit, "Thatta Sugar Mills", was also put to auction thrice between 2007 and 2013 and, eventually, the bid of Omni (Pvt.) Ltd. (company name changed to "Thatta Sugar Mills (Pvt.) Ltd.") of Rupees One Hundred Twenty-Seven Million, Five Hundred Thousand (PKRs.127,500,000) was accepted as recorded in the OA

¹ The Sale Deed was subsequently rectified as certain survey numbers were not mentioned in the Sale Deed. The Rectification Deed was allowed vide Order dated 15.03.2010.

Reference No.22/2012 vide the Court's Order dated 14.02.2013. The Court confirmed the sale and execution of the sale deed of Thatta Sugar Mills on 11.04.2013 (OA Ref. No.23/2013).

5. The Impugned ad-interim Order dated 07.09.2021 arises out of the hearing of OA's Ref. No.26/2015, listed at s.no.1 of the Order Sheet, and the hearing of three other matters, including two Applications challenging the sale, filed by one of the unsuccessful bidders, Sooraj Enterprises Ltd. Hearing of all three other matters was deferred on 07.09.2021, and the learned Single Judge took up OA Ref. No.26/2015 only.

6. The OA's Ref. No.26/2015, heard on 07.09.2021, emerges from the OA's Ref. No.24/2013, which recorded the Objections of the Addl. A.G. against the release of sale proceeds to the National Bank of Pakistan ("NBP") as the employees of the mill and the government departments had not been paid their dues and claimed priority over NBP's claim as mortgagee/decreed-holder.

7. On 25.03.2014, the Court heard the OA Ref. No.24/2013 partly and adjourned the matter.² Thereafter, on 28.05.2014, one of the unsuccessful bidders, Sooraj Enterprises Ltd., filed an Application under Order 39 Rules 1&2 CPC read with Section 151 CPC seeking suspension of the Orders dated 14.02.2013 and 11.04.2013 (CMA No.147/2014) and another Application under Section 12(2) CPC (CMA No.148/2014).³

8. On 24.11.2015, one Muhammad Aqeel Qureshi submitted to the Court that the Inland Revenue Department was liable to recover a huge amount on account of sales tax and federal excise duty against

² The recitals of the ad-interim Order of 25.03.2014 have been reproduced in the ad-interim Order dated 07.09.2021.

³ The two applications were dismissed for non-prosecution on 24.11.2015 but restored vide Order dated 08.09.2016. The applications were also listed for hearing on 07.09.2021.

Respondent No.1 Company. He contended that a claim had been filed with the OA; except that the OA denied filing of any such claim. Accordingly, the Court disposed of the OA Ref. No.24/2013 with the directions that the OA shall consider this claim and submit a fresh reference, presumably with respect to all the claims, on the next hearing date. No claims were filed with OA: neither by the Inland Revenue Department nor anyone else. As a result, no progress was made concerning the claims of NBP, employees of the mills and the government departments as per OA Ref. No.24/2013. They continued to remain pending pursuant to the Court's Order of 24.11.2015. Therefore, OA submitted OA Ref. No.26/2015, which was eventually heard on 07.09.2021 (Impugned ad-interim Order).

9. The Appellants' (Auction-Purchaser) Counsel argued that while entertaining a reference of the Official Assignee regarding the claim of sales tax and excise by Inland Revenue (allegedly O.A. Ref. No.26/2015), the learned Single Judge has recalled and declared as void ab initio the entire auction process which was concluded by the Court in JCM No.15/2006 in 2008 of Dadu Sugar Mills, and in 2013 of New Thatta Sugar Mills, respectively. He submitted that the Appellants were not given any opportunity to be heard. Neither any court notice was issued to the Appellants nor did the Appellants have notice of the proceedings in JCM No.15 of 2006, nor were they party to the proceedings that culminated in the Impugned Order of 07.09.2021. He emphasised that the Impugned Order breaches the principle of natural justice and Article 10-A of the Constitution of Pakistan, 1973 and should be set aside.

10. The learned Addl. A.G. supported the Appellant's (Auction-Purchaser's) appeal but, at the same time, also supported the Impugned Order. The Official Assignee submitted that following the Impugned Order dated 07.09.2021, he commenced his assignment as Provisional Manager, except that CMA Nos.147/2014 (under Order 39 Rules 1&2 CPC) and 148/2014 (under Section 12(2) CPC)

were/are still pending hearing in JCM No.15/2006. According to the Official Assignee, he filed his Reply to CMA Nos.147/2014 and 148/2014 on 28.08.2014, whereafter the unsuccessful bidder, Sooraj Enterprises Ltd., filed Objections to the OA's Reply along with supporting affidavit on 11.11.2014. The Appellant, New Thatta Mills (Pvt.) Ltd. had filed its Counter-Affidavit to CMA No.148/2023 on 18.04.2023 but none to CMA No.147/2014. No Reply was filed so far by New Dadu Sugar Mills (Pvt.) Ltd.

11. We have heard the learned Counsel for the Appellants, the learned Addl. A.G. and the Official Assignee and perused the documents available on record.

12. It is evident from a bare perusal of the Court's Orders during the seven years from 25.03.2014 till the passing of the Impugned Order on 07.09.2021, that no notice of the proceedings was issued to the Appellants, apparently because they were not arrayed as a party in the proceedings and had only participated in the auction proceedings. Therefore, they received no notice of the proceedings. Article 10-A serves as a safeguard for individuals condemned without a fair hearing, ensuring that actions taken against such individuals adhere to the principles of due process of law. In the instant case, Article 10-A of the Constitution guaranteed the right to a free trial, and as auction purchasers, this right was unmistakably infringed upon when the Court failed to provide them with notice. A thorough examination of the appeal file reveals a glaring absence of notice to the auction purchaser, a procedural step that the Court should have diligently observed. The Appellants filed their appeals without delay as soon as they received notice from the Official Assignee as Provisional Manager about the passing of the Order dated 07.09.2021. A breach of Article 10-A of the Constitution of Pakistan is evident. The Appellants were not present before the learned Single Judge to assist the Court in the proceedings. Clearly, the presence of the auction purchaser would have been helpful.

13. We note from the perusal of the Impugned ad-interim Order dated 07.09.2021 that the learned Single Judge has made serious observations regarding the sale process. Additionally, the learned Single Judge has also referred to Order dated 25.03.2014, wherein another learned Single Judge posed a serious challenge to the process followed in the case since JCM No.15 of 2006 was filed. The learned Single Judge observed:

“[I]t appears that the process followed so far, despite clearly pointed out by the order dated 25.03.2014, lacks legal sanctity and turns out to be void ab initio, resultantly the Official Assignee is appointed as Provisional Manager in accordance with Section 325 of the Companies Ordinance, 1984, to proceed within four corners of the winding up companies mechanism provided under the said Ordinance or the 2017 Act, who after giving notice to all concerned initiate proceedings in accordance with law.”

14. Yet, while the above, Impugned ad-interim Order re-states the observations noted by the Court's earlier order dated 25.03.2014, the learned Single Judge neither explains the reason for his observation nor the specific provision of law that was found in violation nor which orders were violated by the parties and by whom and how. The learned Single Judge neither gives reasons for arriving at a particular observation based on documents available on record nor explains how the observation can be substantiated. For example, the observation that “assets of the petitioner company were sold out in bits and pieces through various orders” is one of the observations of the learned Single Judge. Yet, this observation does not refer to the specific orders. There is no mention of what these “various orders” are in support of the observation. There is no discussion of the contents of these “various orders”. The Impugned Order is simply silent.

15. There is another point to be noted regarding the Impugned Order dated 07.09.2021, which perhaps explains the silence on the

part of the learned Judge to elaborate on the issues highlighted above, i.e., while disposing of OA Ref. No.26/2015, the learned Judge, passed an ad-interim Order only. The last paragraph of the Impugned Order relating to s.no.1 states that:

“Till the next date of hearing, no further sale and transfer be made of Dadu Sugar Mills Ltd. and Thatta Sugar Mills, and no payment be made to the creditors, contributors, or any third party and the Official Assignee to file compliance report. Accordingly, Reference No.26 of 2015 is disposed of in the above terms (underling added for emphasis).”

16. On the one hand, the learned Single Judge disposed of the OA Ref. No.2015, yet he says that, “Till the next date of hearing, no further sale and transfer be made of Dadu Sugar Mills and Thatta Sugar Mills and no payment be made to creditors, contributors, or any third party.” It appears that the learned Single Judge may have been silent as it was an “ad-interim” Order, as opposed to a final order. Additionally, the learned Single Judge was apparently going to hear other pending matters on the next date of hearing, which included the unsuccessful bidder, Sooraj Enterprises Ltd. two (2) applications, namely, Application under Order 39 Rules 1&2 CPC read with Section 151 CPC seeking suspension of the Orders dated 14.02.2013 and 11.04.2013 (CMA No.147/2014) and another Application under Section 12(2) CPC (CMA No.148/2014). As such, as the learned Single Judge expected to hear the Appellant/Auction-Purchaser in future, he made no concrete remarks to prejudice the Appellant’s case and chose to remain silent and passed an ad-interim Order only.

17. In view of the above circumstances and discussion, we find no interference is to be made as the matter is likely to be heard by the learned Single Judge to examine the conclusions/issues in the Impugned ad-interim Order of the learned Single Judge dated 07.09.2021 after giving an opportunity of hearing to all the parties, including the Appellant (auction purchaser), to file written reply, counter-affidavit and rejoinder, as the case may be. It is best that the

Appellant/Auction-Purchaser defend the proceedings in JCM No.15/2006 and once and for all put to rest the challenges raised against the auction-purchasers. The remarks made by the learned Single Judge shall be treated as tentative subject to re-hearing of all the parties and stakeholders. However, the Impugned ad-interim Order dated 07.09.2021, shall remain in place as an interim measure in JCM No.15/2006 to be decided by the learned Single Judge at the time of passing the final order on the above issues and all pending applications.

18. The Appeal is allowed in the above terms.

19. It is clarified that the contents of this Judgment relating to the history/facts of the JCM No.15/2006 and its discussion thereof are confined to this Judgment alone and should not be taken as decided/settled, as the case may be. They may not be read against any rights accrued to either party.

8. The parties are left to bear their own costs.

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