

**(1995) 09 AHC CK 0067**  
**In the Allahabad High Court**  
**Case No : Company Application No. 2 of 1993**  
**In Re: Champaran Sugar Co. Ltd.**

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**Date of Decision :** 20-09-1995

**Acts Referred:**

COMPANIES ACT, 1956 — Section 529, 529A, 530

**Citation :** (1998) 91 CompCas 182

**Hon'ble Judges :** A.K. Banerji, J

**Bench :** Single Bench

**Advocate :** Dharendra Kumar, for Dr. B.C. Roy Pharmaceuticals Ltd., Sudhir Chandra, Tarun Agarwal and Geetha Luthra, for Hanuman Sugar and Industries Ltd., J.N. Tewari, for the company in liquidation, M.S. Negi, for the workers union, Yatinder Singh for I.F.C.I., Krishna Murari for State Bank of India, U.S. Awasthi for Marketing Federation, for the Appellant;

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## Judgement

A.K. Banerji, J.—Vide the order dated June 28, 1993, the Board for Industrial and Financial Reconstruction ("BIFR" in short) recommended the winding up of the company, Champaran Sugar Company Limited (hereinafter referred to as "the company in liquidation"). Subsequently the order dated June 28, 1993, passed by the BIFR was confirmed in appeal by the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) on July 4, 1994. Consequently, accepting the recommendation made by the BIFR, this court, vide its order dated September 5, 1994, ordered that the company in liquidation, namely, Champaran Sugar Company Limited having its registered office at Sutherland House, Kanpur, be wound up and appointed the official liquidator, High Court, as the liquidator. However, before the liquidator could take possession of the assets of the two factories of the company at Chanpatiya, West Champaran and Bara Chakiya, East Champaran (Bihar) an application was filed by one Venka-teshwar Vanijya India Limited ("VVIL" in short) stating that the applicant may be impleaded as a party to these proceedings and further be permitted to submit a scheme for running the company in liquidation, and its mills on immediate basis in accordance with the directions given by this court. They also submitted the scheme for taking over and running the company in liquidation. On December 16, 1994, this court

directed that the scheme submitted by the applicant (VVIL) be circulated to the banks and other financial institutions who are the major creditors of the company as well as on the company (in liquidation) and the liquidator. The court also directed that a meeting of the major creditors and officers of the company (in liquidation) be held under the chairmanship of the liquidator for considering the proposed scheme of VVIL. Before the meeting could take place two other proposals for taking over and running the company (in liquidation), one from the I.F.B. Agro Industries Limited and the other from Shree Hanuman Sugar Industries Limited, Calcutta, were received. Appearances were also put in by the company (in liquidation), by the workers' union of the head office of the company at Kanpur, by the unions of the workmen and the cane growers of the two sugar factories of the company (in liquidation) at Bara Chakiya and Chanpatiya and by the Bihar Rajkiya Udpadak Sangh through their respective counsel.

2. After hearing learned counsel for the parties, this court fixed January 21, 1995, the date of the meeting of the major creditors and the aforesaid parties under the chairmanship of the liquidator. Notices had already been directed to be issued to the major creditors which were duly sent by registered post as well as by telegram fixing January 16, 1995, for appearance before the court. However, except the State Bank of India, the other major creditors, viz., the banks and the financial institutions did not put in appearance. The court, however, directed that in case the said creditors wanted to be heard they could attend the meeting for considering the proposals for rehabilitation of the company (in liquidation) on the date fixed for the meeting. The liquidator had submitted a report after the meeting was held on January 21, 1995, in which it was reported that the financial institutions or the major creditors did not attend the meeting and no consensus was arrived at between the parties who attended the meeting. However, they were agreeable that the factories should be immediately started as the crushing season was already on and the cane growers and workers were suffering irreparably. This court after hearing learned counsel for the parties, who had put in appearance in this case, was of the opinion that the schemes/proposals which were now being put up before this court after the recommendations had been made by the BIFR for winding up of the company have to be minutely scrutinized and it has to be seen whether the efforts made by the parties were feasible and could be accepted or the same had been made only to grab the assets of the company (in liquidation). It has also to be examined whether the parties who had submitted their schemes/proposals were having any substantial financial support to pay off the huge dues of the workmen, cane growers and the creditors of the company (in liquidation). However, pending further and deeper probe into the proposals/schemes submitted before the court it would be proper in view of the consensus arrived at between the parties that the two factories of the company (in liquidation) at Bara Chakiya and Chanpatiya be permitted to run immediately. Out of the three proposals/schemes submitted and after hearing learned counsel regarding the

interim arrangement that could be made pending consideration of the proposed schemes, this court, vide its order dated February 1, 1995, permitted VVIL to run the two factories of the company (in liquidation) as an interim measure for the remaining period of the crushing season by putting them to terms. The applicant, VVIL, however, backed out possibly because it could not fulfill the terms and conditions imposed by this court in its order dated February 1, 1995.

3. When the matter was listed again before this court, an application was filed on behalf of one Vishnu Sugar Mills Limited praying that they may be impleaded as a party to the above proceedings and permitted to run the two factories in accordance with the proposals given by them subject to further directions of this court. They, however, submitted that before they submit a proper scheme for consideration before this court they may be permitted to inspect the two sugar factories and may also be given the details of the creditors and the amount of dues of the two factories at Bara Chakiya and Chapatiya separately. Learned counsel appearing for Hanuman Sugar and Industries Limited also made a similar request. This court, vide order dated March 9, 1995, permitted the applicants and all other parties before the court to make inspection of the two factories and also directed the official liquidator to get published an advertisement in at least four national dailies intimating that this court is considering the scheme of rehabilitation of the company (in liquidation) and if any other party is interested therein they may submit their proposal/scheme before this court on or before April 3, 1995. On the advertisement being published another party, namely, Dr. B.C. Roy and Pharmaceutical Limited submitted a proposal/scheme for running the two factories of the company (in liquidation). The other two applicants, namely, Vishnu Sugar Mills and Hanuman Sugar and Industries Limited also sought time to furnish their detailed scheme in the light of the inspection of the two factories of the company (in liquidation) made by them. The court permitted them to submit their schemes provided they furnish cash security of rupees five lacs each by means of a bank draft in the name of the Registrar, High Court, which was to be refunded to the party in case its scheme was not found acceptable by this court. It is noteworthy that I.F.B. Agro Industries which had earlier submitted a scheme along with VVIL did not pursue their scheme any further. When the matter was listed on May 10, 1995, a statement was made by learned counsel appearing for Vishnu Sugar Mills and Hanuman Sugar and Industries Limited that as the financial institutions have not come forward before this court and as the applicants are not very clear about the total liabilities which they have to incur, it is not possible for them to submit any further scheme and they proposed that directions be given by this court for outright sale of the units individually along with the assets without the liabilities and free from all encumbrances. This court consequently held that as Vishnu Sugar Mills and Hanuman Sugar and Industries Limited were not interested in submitting any scheme, the scheme submitted by Dr. B.C. Roy and Pharmaceuticals Limited, which has also furnished a bank draft of rupees five lacs as security, shall be considered after notice is served on the Cane Commissioner, Bihar, Secretary,

Industries Department, Government of Bihar, Director of Industries and the Chief Secretary, Government of Bihar. Notice was directed to be sent by registered post as well as by dasti. Subsequently, notice was also directed to be issued to the Bihar Industrial and Technical Consultancy Organisation Limited ("BITCO" for short). Despite service of the notice, the Government of Bihar did not put in appearance but a letter dated June 16, 1995, was sent to the Deputy Registrar of the court by the Cane Commissioner stating that the scheme furnished by Dr. B.C. Roy and Pharmaceuticals Limited was too vague and without necessary details and unless all the details are furnished it was not possible to make any comments on the scheme furnished by them. When the matter was listed on July 22, 1995, learned counsel appearing for Dr. B.C. Roy Pharmaceuticals Limited stated that they are getting a detailed scheme prepared by a chartered accountant and shall also furnish the latest audited balance-sheet of the company to show their financial status. Subsequently an affidavit was filed on behalf of the said applicant giving certain more details. At that stage Shree Hanuman Sugar and Industries Limited submitted another scheme along with a bank draft for rupees five lacs stating that as the figures had now been received regarding the dues of the company (in liquidation) to its secured creditors, they were interested in running the two factories and were, therefore, submitting a fresh scheme. Appearance was also put in on behalf of IFCI which also sought time for examining the proposals made by the two applicants.

4. On August 16, 1995, this court directed that the schemes now submitted by the two applicants may be sent to the Chief Secretary, Government of Bihar, Cane Commissioner, Patna (Bihar) and the BITCO by registered post as well as by dasti, The Government of Bihar has, however, not put in appearance despite service of notice. A letter dated August 28, 1995, from the Cane Commissioner, Patna (Bihar), to the Deputy Registrar of this court was placed before the court in which it was stated that the Bihar Government has no objection to the mills being run by any party provided this court finds that the scheme submitted by the said party is viable and the said party would be able to run the mills. The said letter also specifies that before possession is handed over to any of the parties in pursuance of the scheme the party concerned should be asked to deposit at least 50 per cent, of the dues of the workmen, cane growers and the Bihar Government and the remaining 50 per cent, of the dues be deposited within six months. It further specifies that the party who is given permission shall run the two factories in accordance with the guidelines and the rules pertaining to sugar factories. When the matter was taken up on August 29, 1995, the Cane Commissioner of Bihar State appeared before the court in support of the letter dated August 28, 1995. A representative of BITCO also appeared before the court and submitted that merely opening the mills by spending a small amount will not serve the purpose as the present crushing capacities of the two mills are much below the viable level of 2500 TCD, and, therefore, the party interested in the taking over the sugar mills should submit a comprehensive technical and financial plan for immediate re-opening of the

sugar mills along with a plan for expansion. It was further submitted that the reopening of each mill will not cost less than rupees five crores and to carry out the expansion programme of each mill the expenditure will be at least rupees twenty-five crores and these financial resources the party must have. Shri Yatinder Singh, learned counsel appearing for the creditor, IFCI has submitted that both the schemes proposed by Dr. B.C. Roy Pharmaceuticals Ltd. and Shri Hanuman Sugar and Industries Limited are vague and do not give any clear proposal for payment of dues to the secured creditors including the IFCI and he has instructions to say that none of the two proposals as submitted before the court is acceptable to the IFCI.

5. I have heard Shri Dharendra Kumar, learned counsel appearing for Dr. B.C. Roy Pharmaceuticals Limited, S/Sri. Sudhir Chandra, Tarun Agarwal and Mrs. Geeta Luthra, learned counsel for Shree Hanuman Sugar and Industries Limited, Shri J.N. Tewari, learned senior counsel for the company (in liquidation), Shri M.S. Negi, learned counsel for the workers union of the head office of the company (in liquidation) at Kanpur, Shri Yatinder Singh, learned counsel for I.F.C.I., Shri Krishna Murari, learned counsel for the State Bank of India, Shri U.S. Awasthi, learned counsel for the marketing federation and the representatives of the workmen and the cane growers of the two factories at Bara Chakiya and Chanpatiya. I have also perused the record of this case.

6. At the very outset it will be pertinent to notice that none of the secured creditors, who have heavy dues against the company (in liquidation), have put in appearance before this court despite registered notices, telegrams and letters sent by speed post. They have also not attended the meeting called by the official liquidator to consider the proposals/schemes submitted by different parties before this court. At a very late stage the I.F.C.I. put in appearance but it has not filed any reply to the schemes. However, an oral statement was made by its counsel that none of the proposed schemes was acceptable to the I.F.C.I. The State Bank of India, which is also one of the secured creditors, has stated that the bank is only interested in its money which was advanced to the company (in liquidation) and it has no objection to any of the schemes provided the dues of the bank are paid before the possession of the mills is handed over to any of the parties in pursuance of any such scheme. The Bihar Government, which is also a major creditor of the company (in liquidation) has not put in appearance before the court or submitted any reply to the schemes. As already noticed above, two letters dated June 16, 1995, and August 28, 1995, have been received from the Cane Commissioner or Bihar Government and in the said two letters the stand taken is that the schemes are vague and it has been left to this court to decide whether any of the parties which has submitted its scheme will be able to run the mills and pay off the dues to the creditors. In the letter dated August 28, 1995, a condition has been put by the Cane Commissioner that 50 per cent, of the dues of the workmen, cane growers and the Bihar Government be paid by the party, who is interested in running the mills, before possession is handed over to the said party for running the mills. The representatives of the workmen of the two

factories as well as the cane growers have, however, fervently appealed to the court that taking into consideration the plight of the workmen and the cane growers, who are solely dependent upon the running of the two factories, at least some interim orders may be passed so that the factories can be run as a trial measure in the present crushing season and at least a certain part of their dues is paid to them. They have also submitted that they have entered into a sort of understanding with Dr. B.C. Roy Pharmaceuticals Limited and they have no objection if the said company is permitted to run the two factories subject to the conditions imposed by this court.

7. Having taken into consideration the respective contentions of learned counsel for the parties, this court is of the view that none of the schemes submitted by the parties can be acceptable at this stage in the absence of the major secured creditors and the Bihar Government before this court. The court has already given wide publicity inviting proposals/schemes for the rehabilitation of the company (in liquidation). Except the parties before the court no other party has shown any interest in the matter.

8. Out of the two schemes which are presently being considered by this court, Shri Hanuman Sugar and Industries Limited has submitted separate schemes for Barachakiya and Chanpatiya Sugar Mills of the company. Dr. B.C. Roy Pharmaceuticals Limited in the scheme submitted by them have not clearly given out whether they have the financial ability presently to pay off the heavy dues of the company (in liquidation) which according to the figures submitted by the company to the official liquidator would be about rupees forty crores. As already stated above the said schemes could not be considered in the absence of the views of the major creditors including the Bihar Government. Ultimately, if none of the two schemes is acceptable to the court and both the schemes are rejected, the court will have no option but to get the assets of the company (in liquidation) valued and then sell them off. The representatives of the workmen who had appealed before me had submitted that in case the two factories of the company (in liquidation) are sold it is mainly the workers and the cane growers, whose livelihood is dependent upon the said two factories, who will be the worst sufferers. It has been further stated that there are about 3,000 workmen working in the two factories and about 35,000 cane growers who are supplying sugarcane to the said factories. The representatives of the workmen and the cane growers have, therefore, prayed that the pending final disposal of the scheme and taking into consideration the fact that the crushing season is about to start, some interim arrangement may be made to run the two factories. From the schemes submitted by Shri Hanuman Sugar and Industries Limited it appears that they are not interested to run the two factories as an interim measure pending final disposal of their schemes. In fact, it has been categorically stated that the two factories cannot be run in the present crushing season as the machines have to be thoroughly overhauled and modernized to make them viable. Learned counsel for Dr. B.C. Roy Pharmaceuticals Limited has, however, contended that as a trial measure before final orders are passed on their

scheme, they may be permitted to run the mills subject to the terms and conditions imposed by this court. It has already been noticed that a similar attempt was earlier made by this court in January, 1995, but the V.V.I.L. which had at that time shown interest in running the mills, had later backed out and, therefore, that exercise failed. It is not known whether history will be repeated again. However, taking into consideration the plight of the cane growers and the workmen and further that the livelihood of a large number of people is involved and also in view of the fact that stock of sugar is already lying in the mills premises and the same will deteriorate by lapse of time and the sugarcane crop standing in the fields of the company (in liquidation) which if not harvested will either be lost or have to be transported to some distant factories, which would not be conducive to the interest of the cane growers, this court considers it expedient in the interest of justice, without prejudice to the rights and contentions of the parties including the secured and unsecured creditors and pending final disposal of different schemes and proposals, to permit Dr. B.C. Roy Pharmaceuticals Limited to run the two sugar factories of the company (in liquidation) at Barachakiya and Chanpatiya as an interim measure on the following terms and conditions :

(1) The applicant, Dr. B.C. Roy Pharmaceuticals Limited, shall deposit a sum of rupees fifty lacs (rupees twenty-five lacs for each factory) for using the plant and machinery and running the two factories of the company (in liquidation) by way of security by means of a bank draft in the name of the official liquidator. This amount shall be kept in a separate account and will be subject to final orders passed by this court.

(2) For the purpose of running the two factories the applicant shall employ the workmen of the two factories presently on their rolls and for that purpose enter into any memorandum of understanding or settlement with them.

(3) The applicant shall pay to the concerned workmen their salary for the current month within thirty days of the taking over of possession of the two factories and continue to pay the monthly salary of the workmen regularly till the end of the present crushing season.

(4) The applicant shall deposit in lump sum 25 per cent, of the entire arrears of the workmen of the two factories and the cane growers in a scheduled bank at Chanpatiya or Barachakiya in two separate accounts -- one for payment to the workmen and employees of the two factories and the other for payment to the cane growers/cane suppliers. This deposit shall be made by the applicant, Dr. B.C. Roy and Pharmaceuticals Limited, within one month from the date of taking over possession of the mills. The account for the payment to the workmen and the employees of the two factories shall be operated jointly by the managing director of the applicant company and the district magistrate of the district or the Labour Commissioner or their authorised representatives so that payments can be made to the workmen by means of cheques. Similarly the account for the payment to the cane growers/cane suppliers shall be operated jointly by the

managing director of the applicant company and the Cane Commissioner and the payment will be made to the cane growers/cane suppliers by means of cheques.

(5) The price of the sugarcane purchased by the applicant-company during the present crushing season shall be paid to the cane growers/cane suppliers as and when the same falls due.

(6) The applicant shall purchase the sugarcane crop standing on the land owned by the company (in liquidation) at the market rate and shall deposit the price thereof with the official liquidator by means of bank draft.

(7) The applicant is permitted to obtain all requisite clearances, no objection certificates and licences, etc., for running the two factories in its name for the current crushing season.

(8) The applicant shall get an inventory of the stores of each factory prepared with the help of the representative of the company (in liquidation) and all the items which are taken out of the stores, if required, shall be accounted for. The company (in liquidation) shall post a representative for the said purpose and to safeguard the interest of the company and the salary of the said representative of the company (in liquidation) shall be borne by the applicant company.

(9) The applicant shall keep the plant and machinery of the two factories in good order and shall not transfer, sell or remove any part of the plant or the machinery and shall also not sell any asset of the factories except the finished product. In case any replacement of the machinery or a part thereof is required the same shall be done after obtaining necessary orders from this court.

(10) The applicant shall get the stocks of sugar, khandsari and molasses, which are stored in the premises of the two factories, valued with the help of the Food Corporation of India and the same shall be got sold as per the said valuation or after obtaining offers from local interested parties or the Food Corporation of India, with the permission of the court and the amount of the sale consideration shall be sent to the official liquidator for being deposited in a separate account and shall be disbursed after obtaining orders from this court.

(11) The applicant will deploy sufficient number of security guards for the safety and security of the two factories and their assets.

(12) The applicant is free to engage additional workmen and employees as per the requirement at their own cost. However, no workman or employee can claim any amount from the official liquidator for non-payment of any dues by the applicant.

(13) If the applicant fails to run the two factories due to any reason or withdraw themselves from the rehabilitation scheme under consideration they will not claim any compensation or re-imbursment of any expenditure or any amount of arrears paid to the workmen or the cane growers/cane suppliers as down payment from the official liquidator. However, the down payment of 25 per cent,



made to the workmen and cane growers will be deducted by the official liquidator while adjudicating the claims of the workmen and the cane growers/cane suppliers under Sections 529, 529A and 530 of the Companies Act, 1956, if the schemes are not accepted and in the event of the assets of the company being sold. The deducted amount in that case can be paid back to the applicant subject to the orders passed by this court with regard to the same.

(14) The applicant shall have no right over the landed property of the company (in liquidation) and it shall be open to the official liquidator to get the same valued, if necessary, for the purpose of winding up proceedings.

(15) The possession of the two factories shall be handed over to the applicant company only after the applicant furnishes security of rupees fifty lacs to the official liquidator by means of a bank draft and gives an undertaking to comply with the terms and conditions contained in this order and also undertakes therein to hand over vacant and peaceful possession to the official liquidator or any other party as directed by this court in case their scheme is not found acceptable ultimately by this court when the matter is finally considered.

(16) The applicant shall submit a report to the official liquidator each month regarding the production and the payments made to the workmen, employees and the cane growers/cane suppliers and the official liquidator shall put up the said report before the court.

(17) Till the scheme of rehabilitation is finally decided and the interim arrangement continues this court will have the right and jurisdiction to decide, alter, add or withdraw any of the conditions keeping in view the circumstances.

(18) The applicant shall, before taking over possession of the two factories as per the directions of this court, give due information to the district magistrates of the two districts where the factories are situate and to the official liquidator, and presidents of the recognised workmen unions of the two factories who shall depute their representatives and in whose presence the possession will be handed over to the applicant.

(19) If the applicant successfully runs the two factories during the current season then the proposal of complete rehabilitation and taking over of the two units shall be considered along with the other scheme after obtaining the views of the creditors.

(20) It shall be open to the applicant to take permission from the concerned authorities regarding free sale of 100 per cent, non-levy sugar. If such an application is made by the applicant the authorities concerned shall consider the same taking into consideration the special circumstances and facts of this case.

9. It shall be open to the applicant or any of the parties and the official liquidator to seek further directions from the court in the case of any difficulty in the running of the two factories or for the purpose of seeking any clarification of this order.