

HIGH FLYING OSWALS CRASH LAND ON ACCUSATIONS OF HUGE FRAUD DOWN UNDER

Pankaj and Radhika Oswal allegedly siphoned away hundreds of millions of dollars in Australia to support their lavish lifestyle, charges which the couple denies

ILLUSTRATION: AJAY K MOHANTY



Pankaj and Radhika have now relocated from Perth to Dubai ever since they ran afoul of authorities

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When industrialist Pankaj Oswal set out to build one of the largest liquid ammonia plants in the resource rich state of Western Australia, his stellar rise attracted admiration and envy. A decade later, however, he stands accused of one of the biggest corporate frauds in Australia. His Burrup Fertilisers Pty Ltd (BFPL), a subsidiary of Burrup Holdings Limited, went into receivership last December.

The ANZ Bank, which is trying to recover A\$900m in loans, appointed PPB Advisory as the Receivers following default events relating to debt facilities which were established between 2002 and 2007; evidence of financial irregularities; and ongoing court disputes between Oswal, who was Burrup's chairman and managing director, and Norway's Yara International, a 35 per cent shareholder and customer of the ammonia plant.

The Oswals—Pankaj and his wife Radhika—have consistently refuted any wrongdoing. The couple relocated to Dubai from Perth, a city they called home for nearly 10 years, when BFPL was placed under receivership in December 2010.

Born with a silver spoon in his mouth, the grandson of one of the great Ludhiana textile magnates and son of Abhey Oswal, Pankaj borrowed from friends and family and took loan from banks to establish BFPL in 2000. The young chemical engineer began construction of the plant on the rock-strewn Burrup Peninsula (WA) in 2003. Production started in April 2006 and BFPL's first export shipment was made in June 2006.

"I built the plant from scratch in 2000 with the help of family and colleagues from India. This was done at a time when no one in Australia was willing to risk building a project on the Burrup," Mr Oswal said in a statement issued in June this year.

Mr Oswal owned 30 per cent of the shares in Burrup Holdings Limited and Mrs Oswal owned 35 per cent shares, which Mr Oswal said in a statement in December were "not subject to any security and which cannot be sold by a receiver".

Documents filed in the Federal Court in Perth by Receivers PPB Advisory in October 2011 allege the former director transferred more than double the amount of money previously estimated ie A\$ 210 million from BFPL to his privately owned overseas companies.

In the first Court documents filed in

March 2011, PPB Advisory claimed that the Oswals were required to re-pay A\$95 million. They allege that Mr Oswal siphoned money out of the company to pay for the couple's extravagant lifestyle. The new statement of claim filed in early October this year repeats earlier allegations that Mr Oswal made payments with company funds toward construction of the family's mansion, luxury cars, a boat and a corporate jet. But now, PPB alleges that Mr Oswal transferred A\$51.7m of BFPL funds to a number of Singapore shelf companies "for no consideration and/or benefit". The amended statement of claim filed by PPB also alleges that a number of other companies issued "inflated invoices" for goods or services that were to be provided to BFPL totalling A\$ 61 million.

The Federal Court documents list more than 50 transactions made during 2009 and 2010, for example, in the case of Oswal Projects, the real value of the work performed was A\$ 462,000, but the actual amount paid was A\$7.4 million.

Mr Oswal has previously said he was entitled to transfer money to his private companies in exchange for his guaranteeing cost overruns during the construction of the plant.

A report by accounting firm BDO, commissioned by the Oswals law firm, found that PPB Advisory, serving as the receiver for BFPL, charged A\$5.1 million in fees while spending A\$ 50,000 on iPads, A\$ 51,000 on entertainment at AFL matches and hundreds of thousands spent on travel and accommodation in only five months, reports *The Australian*.

The Oswals, who are contesting the right of lender ANZ Bank to appoint Receivers to BFPL, have said they look forward to the sale of Burrup Fertilisers. In September, Radhika lodged a writ in the Victorian Supreme Court suing ANZ Bank, alleging it engaged in unconscionable conduct in 2009.

The A\$1 billion plant produces 760,000 tonnes of ammonia a year, 6 per cent of the world's total. Mr Oswal lodged another legal action in September 2011, claiming PPB Advisory had breached its duties by disclosing confidential documents to potential buyers.

"During the sales process for BFPL, potential bidders were granted access to the BFPL data room by PPB Advisory. This provided bidders with the opportunity to access legally privileged documents including legal advice the company has received in relation to its prospects of successfully prosecuting an action in the Supreme Court

to secure Burrup Fertiliser's supplies of gas. Apache is one of the parties to the gas supply agreement and gained access to the data room as a potential bidder for my shares", Mr Oswal said in a statement.

BFPL has a 25-year take-or-pay contract for gas with Apache Energy Ltd, Tap Oil Ltd and Kufpec Australia. Mr Oswal had sealed a deal with Apache to provide him with huge quantities of natural gas at what is now a bargain price. He is convinced that "ANZ, PPB Advisory, and Yara have colluded to force me to sell at a rock bottom price".

Esben Tuman, Vice President Corporate Communications, Yara International ASA, a leading global supplier of mineral fertilisers and agronomic solutions, told *Business Standard*, "We are comfortable with our rights related to our ownership in Burrup Holdings. The legal proceedings related to the remaining 65 per cent share in Burrup Holdings are multiple and complicated, and there is a risk that these will remain unresolved for some time, unless a settlement is reached. The sales process is run by the bank and the receivers. We are awaiting the outcome of the process, and we are interested in buying the stake, given the right valuation".

The Receivers still expect the sale process to be concluded before the year end. "We have received over 20 expressions of interest and have narrowed it down to a small group of potential buyers," a spokesperson for PPB Advisory told *Business Standard*.

However, an ANZ Bank spokesperson told *Business Standard*, "The bank has reasonable grounds to expect a full recovery in relation to the Oswal exposure, but we do note that the situation is complex with numerous pieces of litigation and may still take some considerable time to resolve".

A spokesperson for the Australian Securities & Investments Commission told *Business Standard*, "I can confirm we are currently working with the receiver, PPB, and are in the process of assessing information provided".

The Oswals, who refused *Business Standard*'s interview request, have come under the spotlight not only for their business dealings but also for their lavish cocktail parties and the A\$70 million mansion nicknamed "Taj-on-the-Swan" river in the swanky Peppermint Grove suburb of Perth.

According to reports in the local media, Radhika had been issued an A\$71 million income-tax bill for 2007. The debt rose with more than A\$60 million in penalty fees spiralling the amount to A\$186 million by August this year.

For the Oswals, the news only seems to get worse.

(Exchange rate for each Australian dollar (A\$) = 50.95 INR)

IN THE CASE OF OSWAL PROJECTS, allegedly the real value of the work performed was A\$ 462,000, but the actual amount paid was A\$7.4 million.