

**In Re: Imp Powers Ltd.**

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**Court :** Mumbai

**Decided On :** Mar-29-2007

**Reported in :** IV(2008)BC183; 2007(4)BomCR761; [2008]142CompCas481(Bom)

**Judge :** D.Y. Chandrachud, J.

**Acts :** [Companies Act, 1956](#) - Sections 391 to 394, 442, 443, 446, 529A and 537; [Recovery of Debts Due to Banks and Financial Institutions Act, 1993](#) - Sections 17, 17(1), 18, 19(19) and 34; [Constitution of India](#) - Articles 226 and 227

**Appeal No. :** Company Petition No. 395 of 2006

**Appellant :** In Re: Imp Powers Ltd.

**Advocate for Def. :** Vandana Jaisingh, Adv.

**Advocate for Pet/Ap. :** Chirag Balsara, Adv., i/b., ;Prashant Pandit, Adv.;N.D. Sharma and ;Bharti Mahant, Adv.

**Judgement :**

**D.Y. Chandrachud, J.**

1. In this proceeding, the consent of the court is sought to a scheme of an arrangement in exercise of powers conferred by Sections 391 to 394 of the [Companies Act, 1956](#).

2. As on September 30, 2005, 47.2 per cent, of the issued and subscribed share capital of the petitioner was held by promoters, 21.20 per cent, by financial institutions and 31.60 per cent, by members of the public. As on June 30, 2005, according to the petitioners, there was an outstanding of nearly Rs. 68 crores due to the secured creditors. The petitioners proposed a scheme of compromise and arrangement with the secured creditors. On December 23, 2004, the Corporate Debt Restructuring Cell granted its approval to the proposal made by the petitioners and appointed a monitoring committee in order to sort out the outstanding issues and for monitoring the implementation of the reconstruction package.

3. In pursuance of the orders passed by this court, a meeting was convened of the secured creditors on May 20, 2006. The report of the scrutinizer sets out that out of the eight secured creditors who attended the meeting, seven who had a total outstanding of Rs. 6204.62 lakhs voted in favour of the scheme of compromise/arrangement. IndusInd Bank Ltd. which is also a secured creditor voted against the scheme. According to the petitioners, the outstandings, due and payable to IndusInd Bank were Rs. 409.53 lakhs. This has been contested by the bank and according to the bank, the correct amount due as on June 30, 2005, stood at Rs. 625.63 lakhs. IndusInd Bank Ltd. has instituted proceedings before the Debts Recovery Tribunal under the provisions of the [Recovery of Debts Due to Banks and Financial Institutions Act, 1993](#) for the recovery of its dues. The proceeding initiated by the bank (O.A. No. 253 of 2005) is pending before the Debts Recovery Tribunal, Mumbai.

4. The principal objection which has been urged on behalf of IndusInd Bank Ltd. is that in view of the judgment of the Supreme Court in Allahabad Bank v. Canara Bank : [2000]2SCR1102 the exclusive jurisdiction on question of adjudication, execution and working out the priorities vests with the Debts Recovery Tribunal constituted under the plenary provisions of the enactment of 1993. The Supreme Court, it is urged, held that whereas the [Companies Act, 1956](#), is a general statute, the RDB Act is a special statute which would overrule the former. Alternatively, even if both the statutes were regarded as special enactment, the RDB Act being a later enactment of 1993 would govern. It is submitted that while sanctioning a

scheme of compromise/arrangement under Section 394 of the [Companies Act, 1956](#), this court would have no jurisdiction to adjudicate upon the claim of IndusInd Bank Ltd. or to foreclose an adjudication on the application for recovery instituted in the Debts Recovery Tribunal. But, it has been submitted that the effect of the scheme involves precisely such a consequence, since the scheme contemplates certain concessions to be granted by lending institutions, including a reduction in the rate of interest to be charged. Moreover, it is submitted that the scheme contemplates the restoration of working capital facilities, a consequence that would be imposed even on a financial institution which is not prepared to be a part of a restructuring package propounded by the CDR cell. At this stage, it would be material to note that the objector before this court is a company by name of Pegasus Assets Reconstruction Pvt. Ltd. which claims under an agreement of assignment entered into between the IndusInd Bank Ltd. and the objector on August 30, 2006.

5. On the other hand it has been urged on behalf of the petitioners that Section 391 of the [Companies Act, 1956](#), makes no distinction between a creditor who is a financial institution or otherwise. The submission was that in exercise of the power conferred by Section 394, the court can affect the rights of all creditors and in that process modify existing contracts. Consequently, it has been urged that if an existing contract is modified by the court in exercise of the power conferred by Section 394 all the creditors and the Debts Recovery Tribunal as a judicial forum constituted under the RDB Act will be bound to be sanctioned, it is submitted that the scheme has a force of law and the scheme as it stands will have to be enforced by the Debts Recovery Tribunal.

6. The objection to the sanction of the scheme in so far as it comprehends the debts due to IndusInd Bank will have to be upheld in view of the judgment of the Supreme Court in Allahabad Bank v. Canara Bank [2000] 101 Comp Cas 64. The [Recovery of Debts Due to Banks and Financial Institutions Act, 1993](#) was enacted in pursuance of the report of the Narsimham Committee in order to provide expeditious adjudication and recovery of debts due to banks and financial institutions. Sub-section (1) of Section 17 provides that the Tribunal shall exercise, on and from the appointed date, the jurisdiction, powers and authority to entertain

and decide applications from banks and financial institutions for recovery of debts due to them. Section 18 bars the jurisdiction, power or authority (except of the Supreme Court and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) relating to matters specified in Section 17. Section 34 centers overriding effect upon the provisions of the Act, notwithstanding anything inconsistent contained in any other law for the time being in force. In the decision in Allahabad Bank v. Canara Bank [2000] 101 Comp Cas 64 the Supreme Court held that the jurisdiction of the Tribunal in matters of adjudication is exclusive. One of the points which arose for consideration was whether the Act would override the provisions of Sections 442, 443 and 537 of the [Companies Act, 1956](#). The Supreme Court held that a 'superior purpose' underlies the RDB Act, something more important than the object which underlies Sections 442, 446 and 537 of the [Companies Act, 1956](#). The intention of Parliament was, it is emphasised, 'that there should be a speedy and summary remedy for recovery of thousand of crores which were due to the banks and to the financial institutions, so that the delays occurring in winding up proceedings could be avoided' (page 81). The Supreme Court held that the exclusiveness of jurisdiction covered matters of adjudication as well as issues relating to the execution of orders and Section 19(19) of the RDB Act, empowers the Debts Recovery Tribunal to order distribution of sale proceeds amongst secured creditors in accordance with the provisions of Section 529A of the [Companies Act, 1956](#). The Supreme Court held thus (page 82):

Thus, on questions of adjudication, execution and working out priorities, the special provisions made in the RDB Act have to be applied.

7. The Supreme Court upheld the view taken by the several High Courts that the [Companies Act, 1956](#), must be treated as a general statute and the RDB Act as a special statute has overriding effect over the general statute. The Supreme Court held that alternatively even if both the statutes were regarded as special enactments the later enactment will prevail over the earlier.

8. The submission of learned Counsel for the petitioner is that the powers of the High Court under Sections 391 and 394 are untrammelled by the provisions of the RDB Act because Section 391 does not make a distinction between classes of

creditors. Hence, it is urged that under Section 394, the High Court has the power to sanction a compromise or arrangement which has the effect of modifying any contract and once the contract with the secured creditors is so modified, the Debts Recovery Tribunal would necessarily be bound to enforce the terms of the modified arrangement. The submission cannot be accepted for more than one reasons. First and foremost, in the judgment in Allahabad Bank v. Canara Bank [2000] 101 Comp Cas 64 the Supreme Court affirmed the view taken by several High Courts which was to the effect that the [Companies Act, 1956](#) is a general enactment which will give way to the special provisions contained in the RDB Act which is enacted to ensure speedy and expeditious adjudication and realisation of debts due to banks and financial institutions. Secondly, in the exercise of powers conferred by Section 17 of the RDB Act, the Debts Recovery Tribunal have a plenary jurisdiction to enter upon and determine all the issues pertaining to adjudication, execution and working out priorities. Thirdly, the process of adjudication into the debt due to IndusInd Bank has already been set in motion by the institution of the proceedings under the RDB Act. The sanctioning of the scheme under Sections 391 to 394 will unquestionably dilute the full and plenary powers conferred under the Tribunal under the RDB Act to adjudicate upon the claim of the bank as presented. Fourthly, the exercise of powers of the company court in matters which fall within the ambit of the jurisdiction of the Debts Recovery Tribunal, would clearly amount to curtailing the jurisdiction of the Tribunal to adjudicate upon the claim of recovery submitted before the Tribunal.

9. The judgment of the Supreme Court in Allahabad Bank v. Canara Bank [2000] 101 Comp Cas 64 was sought to be distinguished in the proceedings which arose before the Kerala High Court on the ground that the High Court was dealing with issues leading to an application filed for stay of a proceeding under Section 391(6). In BPL Ltd. v. BNP Paribas Company Appeal No. 9 of 2005 decided on 19-7-2005, a Division Bench of hon'ble Mr. Justice R. Bhaskaran and hon'ble Mr. Justice K.P. Balachandran observed thus:

The Supreme Court in Allahabad Bank v. Canara Bank : [2000]2SCR1102 has held that a company court has no jurisdiction over the Debts Recovery Tribunal and the Recovery Officers even in cases where winding up petitions are pending

or winding up order has been made. This court has only to follow the same. Though the learned senior counsel for the appellant has argued that in this case we are concerned with an application filed under Section 391(6) of the Companies Act and that question was not under the consideration of the Supreme Court, we do not think that we will be justified in accepting that contention as according to us, the position is not better for the company when even in winding up proceedings the company court has no jurisdiction to stay the proceedings before the Debts Recovery Tribunal.

10. In a subsequent decision in UCO Bank v. BPL Ltd. Company Appeal No. 1 of 2006 decided on 20-12-2006, a Division Bench of the Kerala High Court held that it was not within the jurisdiction of the company judge to give positive directions that all legal proceedings that were pending would stand terminated.

The scheme of arrangement which has been proposed before the court would have to be modified with reference to the claim submitted before the Debts Recovery Tribunal in regard to the debts due to IndusInd Bank Ltd. Clause B of the scheme contains the following heading:

(B) Working capital:

(Terms of restructuring of assistance for working capital bankers, viz. State Bank of Hyderabad, State Bank of Saurashtra, Bank of India, Karnataka Bank Limited, IndusInd Bank, NSD, SDICI).

The reference to IndusInd Bank Ltd. shall stand deleted. Consequently, it is clarified that the effect thereof would be that the proceedings pending before the Debts Recovery Tribunal shall not stand affected as a result of the sanction of the scheme of arrangement by the court.

11. In so far as the other lending institutions are concerned, it has emerged from the proceedings from the court that the secured creditors representing 90.73 per cent. of the total debts have consented to the scheme. Greater Bombay Co-operative Bank Ltd. which represents 3.38 per cent. in value of the total outstandings abstained from voting. The report of the scrutinizer, dated June 13,

2006, has set out that more than 3/4th in value of the secured creditors of the company present at the meeting voted in favour of the scheme of compromise/arrangement. Even if, due consideration is given to the fact that the claim of IndusInd Bank Ltd. is asserted by the bank at Rs. 625.63 lakhs (as opposed to Rs. 409.53 lakhs as stated in the scheme of compromise/arrangement) that would not affect the question as to whether 3/4th in value of the secured creditors had affirmed the scheme. The regional director has appeared before the court through counsel to state that there is no objection to the scheme. Amongst the secured creditors, those who opted for the scheme are Industrial Bank of India, State Bank of India, State Bank of Hyderabad, Bank of India and Karnataka Bank Ltd. Those lending institutions have agreed to the scheme, having taken a considered decision in their commercial interest. The scheme contemplates various additional conditions. A monitoring committee has been constituted by a letter dated December 21, 2006. Amongst the conditions imposed is a condition to the effect that the company shall not dispose of any of its fixed assets without the permission of the lenders. Sale of assets will be carried out through an assets sale committee. The restructuring package is subject to annual review and the financial institutions have reserved to themselves the right to review the package and to stipulate additional conditions. The institutions have reserved the right to reset the interest rates after three years from the date of approval of the restructuring package and to seek recompense for their sacrifices in the event of a profitable financial position of the company.

12. In these circumstances, having considered the fact that other lending institutions have taken a commercial decision in their own interests, there is no reason as to why the scheme should not be sanctioned, subject to the modification which has already been adverted to hereinabove, relating to the proceedings initiated before the Debts Recovery Tribunal for the recovery of the debt due to the IndusInd Bank.

In the circumstances, the company petition is made absolute in terms of prayer Clause (a) subject to the following conditions:

1. The scheme as proposed shall stand modified by deleting from the scheme, any reference to IndusInd Bank Ltd., which has not accepted the scheme and has instituted proceedings before the Debts Recovery Tribunal for realisation of its dues.

2. In the event that the petitioner seeks to carry out any sale of assets under the scheme which would affect any securities of IndusInd Bank, prior notice of two weeks shall be furnished to the objectors Pegasus Assets Reconstruction Pvt. Ltd. in order to enable the objector to take appropriate steps to safe-guard their interest.

The company petition is deposed of accordingly.

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