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Court : DRAT Delhi

Decided On : Nov-21-2001

Judge : A Srivastava

Appellant : Weston Electronics Ltd. and ors.

Respondent : State Bank of India

Advocate for Def. : Shri. Arun Kumar Goyal. Learned Counsel

Judgement :

1. This appeal is against order dated 28.2.2001 passed by the learned Presiding Officer of DRT-I, Delhi in O.A. No. 23/95.

2. By the impugned order, Learned Presiding Officer has dismissed an application of the appellants which was moved also by others, viz., Sunder T. Vacahni, Smt. Kavita Vachani and Shri Narendra Vachani. By that application, a prayer was made that the consent decree dated 30.8.1995 passed in the aforesaid O.A. be set aside; it be declared that the compromise deed entered into between the parties was void ab initio and that the respondent Bank (State Bank of India) be directed to refund the entire amount which they had fraudulently obtained from the applicants in the guise of recovery as per the orders of the Tribunal. The grounds taken for setting aside the consent decree, were, inter alia, that the borrowings made by the applicants were ultra vires the company as the same were made on the basis of a resolution passed by circulation and after the date of the alleged conclusion of a contract by acceptance in writing of the demanded loan amount;

that the loan advanced was legally unenforceable in any Court of law in view of a bar created by the applicable substantive provisions of the Companies Act; that even if there was a debt against the appellants, the same was not legally recoverable with the alleged borrowings have been made by the company without any borrowing powers; that no resolution to take loan was passed and only a proposal was discussed in the meeting of the Board of Directors; that as per Section 29(l)(c) of the Companies Act, the entire lending was illegal and ultra vires the provisions of the Companies Act; that ultra vires loans do not create any relationship of debtor and creditor; that the Directors of the Company were not competent to enter into any contract with the respondent Bank; that the respondent Bank misled the Hon'ble Tribunal by misrepresenting and concealment of material facts and thereby fraudulently obtained a consent decree which it was never entitled to; that the respondent Bank dishonestly caused the passing of a favourable order in their favour; that the alleged compromise deed between the parties is void ab initio as the respondent Bank dishonestly caused the passing of a favourable order in their favour; that the alleged compromise deed between the parties is void ab initio as the respondent Bank forced the applicant to sign on the dotted lines by exerting undue influence, coercion and threat for they enjoyed a dominant position of a Banker; that the respondent Bank compelled the applicants to act against their will and made them sign the compromise deed and got the same decreed by the Tribunal; that the compromise deed is void ab initio as it incorporates various penalty clauses and thus violative of the provisions of Indian Contract Act.

3. Learned Presiding Officer has dismissed the aforesaid application under the impugned order saying that he could not accept the contentions of the applicants that the Board of Directors of defendant No. 1 was not competent to avail the loan facility from the respondent Bank. According to him, what transpired in the company is a matter of their internal management and, therefore, the same cannot be a ground for setting aside the consent decree. He also observed that the consent decree was passed on 30.8.1995 and the application for setting aside the same has been filed after more than five years. The application was dismissed in limine.

4. Feeling aggrieved, this appeal has been filed. It has been vehemently opposed by the respondent Bank. I have heard learned Counsels for the parties.

5. Learned Counsel for the appellants in addition to what grounds had been taken in the application for setting aside the consent decree also contended that the consent decree became a nullity because the respondent Bank misrepresented the appellants into entering into a compromise by promising to give No Objection Certificate on payment of certain amount which the respondent Bank never gave. This plea is stated to have been taken in the rejoinder.

6. The facts of the case appear to be that the aforesaid O.A. was filed in the year 1995 against the appellants and some others. A joint application accompanied with a compromise deed was moved by the parties in the aforesaid O.A. with a prayer that the Tribunal may take the said compromise between the parties on record and pass orders in terms thereof. Learned Presiding Officer on receipt of such an application along with a compromise deed took up the matter and recorded the statement of Shri P. Khosla, Asstt. General Manager on behalf of the applicant Bank and Shri Upender Nath Marwah, Shri Sunder T. Vachani and Shri R. Ravi Vachani on behalf of defendants. In their statement, they admitted the compromise. Accordingly, the learned Presiding Officer of the concerned Tribunal passed the final order on 30.8.1995 on the basis of the compromise deed and directed that the compromise deed/ agreement shall form part of the order. Learned Counsel for the respondent Bank has filed certified true extracts of the proceedings of the meeting of the Board of Directors of M/s. Weston Electronics Ltd. (Appellant No.1) held on 30.3.1995. The resolution passed by M/s. Weston Electronics Ltd. is stated to be as follows : "Resolved that the consent of the company be and is hereby given to revive the documents already executed on 11.5.1992 for availing various credit facilities from the "State Bank of India", Okhla Industrial Estate, New Delhi, sanctioned vide their letter No. SIB/31/365 dated 7th February, 1992.

Further resolved to request as desired by the Bank, Shri Sunder T. Vachani, Shri Kamal Vachani and Shri Ravi Vachani to revive the various guarantee documents to the Bank for various credit facilities granted to the Company.

Further resolved that the enclosed revival documents received under cover of the Bank's request letter dated 19.1.1995 and which have been placed before the meeting be and are hereby approved for execution by the Company in accordance with the Articles of Association of the Company.

Further resolved that Shri Sunder T. Vachani, Chairman and Managing Director of the Company is hereby authorized to execute, on behalf of the Company, the necessary revival documents required by the Bank in this connection and that the common seal of the Company be affixed wherever necessary in the presence of Shri Ravi Vachani, Director of the Company and Shri Arun Kumar Goel, Secretary of the Company.

Further resolved that this revival of documents in favour of State Bank of India be and is hereby done with the clear understanding and belief that this revival of documents will in no way or manner whatsoever affect, vitiate, jeopardize or prejudice the One Time Settlement with the Bank".

7. These extracts were issued for M/s. Weston Electronics Ltd. by its Company Secretary Shri Arun Kumar Goyal. Learned Counsel for the respondent also invited my attention to the Annual Reports of M/s.

Weston Electronics Ltd. for the years 1995-96 and 1996-97. For the year 1995-96, at page 130 of the reply filed by the respondent, in the category of secured loans, there is an entry of short-term loans from Banks--SBI Capital--showing an amount of Rs. 2,75,312,432. Likewise, for the year 1996-97, at page 148 of the reply, the following entry is there : The Company, under the compromise settlement with the State Bank of India, has so far paid Rs. 598 lacs, out of which Rs. 70 lacs payable as upfront amount. Equity shares worth Rs. 250 lacs have been issued in favour of the Bank during the year and zero interest Redeemable Secured Debentures for Rs. 250 lacs have also been issued, on 29th November, 1997 (subsequent to the Balance Sheet date), in favour the Bank, as per the terms of the settlement.

Various alternate proposals have been submitted to the Bank for payment of balance amount of Rs, 1902 lacs (including upfront amount of Rs. 102 lacs). The same is under consideration of the Bank." 8. The contention of the learned

Counsel for the respondent was that even after entering into a compromise with the Bank M/s. Weston Electronics Ltd, was showing the loans in its Annual Report and also showing the settlement under consideration with the Bank under the compromise decree. According to him, after five years of entering into a compromise deed which became part of the compromise decree, the appellants came out with a plea of fraud, etc. on the part of the respondent Bank to anyhow get the compromise decree set aside in order to get relief from the liability to pay the loan. He contended that the appellants were anyhow trying to wriggle out from the liability there is to the tune of about Rs. 79 crores by taking frivolous pleas.

9. I-have carefully considered the rival arguments of the parties and the arguments advanced by learned Counsels appearing for the parties.

10. There is no dispute that a joint application with a compromise deed was filed before the Tribunal below. There is also no dispute that the Balance Sheet of the appellant does show the loan of the respondent Bank and the compromise having entered into by the appellants with the respondent Bank. There is no dispute that the pleas of ultra vires, etc, and illegality . of law were not taken by the appellants before the Tribunal below. In this appeal, since there is a question whether the consent decree should be set aside on the grounds of fraud, etc.

the only point to be considered is whether the consent of the appellants for the consent decree was taken by fraud or whether the respondent Bank exercised any undue influence on the appellants for getting the compromise deed executed and thereafter getting the compromise decree. No material particulars have been given in the application for setting side the consent decree on the grounds of fraud of undue influence. Further, no material particulars have been given as to how the respondent Bank committed a fraud upon the Tribunal to have the compromise decree. What I find is that the application for setting aside the ex parte decree is solely on ground that the loan advanced by the respondent Bank was ultra vires the Companies Act and the loan taken by the Directors of the Company was ultra vires the Company.

These grounds are not germane for setting aside the consent decree. The appellants could have taken pleas before the Tribunal below in their defence.

Instead, they preferred to move a joint application for compromise annexing the compromise deed and requested the Tribunal below to pass a decree in terms of the compromise deed. Even after passing of the compromise decree, the Appellant No. 1 and obviously Appellant Nos. 1 and 3 were admitting the loan taken from respondent Bank in their Annual Report and also admitting the compromise having entered into by them with the respondent Bank. It is also on record that prior to the passing of the decree, the Board of Directors of the Appellant No. 1 in their meeting held on 30.3.1995 resolved that the consent of the Company was hereby given to revive the documents already executed on 11.5.1992 for availing various credit facilities from the State Bank of India, Okhla Industrial Estate, New Delhi, sanctioned, vide their letter No. SIB/31/365 dated 7.2.1992. It shows that the Board of Directors of the company in its meeting were fully in the know of the loan having been taken from State Bank of India (Copy of these resolutions are at page 29 of the reply of the respondent Bank).

11. In the aforesaid circumstances, I am not agreeable to accept the pleas of the appellants that any fraud, coercion or influence was exercised upon them to sign the compromise deed and to sign the joint application for compromise decree moved before the Tribunal below. All the pleas taken in the application do not reflect on signing the compromise deed and signing the joint application for compromise order from the Tribunal below on the basis of compromise deed. The grounds taken in the appeal related to the maintainability of the recovery application moved by the respondent Bank and if the appellants wanted to contest the recovery application on these grounds, they were within their rights to do so before moving application for compromise decree.

12. The fact remains that they instead of opposing the application on those grounds entered into an agreement with the respondent Bank to pay only Rs. 30 crores against the liability of Rs. 63,04,03,332.42 with pendente lite and future interest @ 22.25% per annum. Under the compromise deed, the payment of Rs. 30 crores was also to be paid in instalments. Therefore, I am inclined to believe that there was a conscious decision on the part of the appellants to enter into a compromise with the respondent Bank to gain a major benefit. This conscious decision on the part of the appellants is reflected from the resolution passed by the

Board of Directors of Appellant No. 1 in the meeting of the Board on 28.4.1995 (a copy of which had been placed on record by the respondent Bank on 20.11.2001) in which it was resolved as follows: "Resolved that letter No. CBD/1202 dated 17.4.1995 received from State Bank of India, New Delhi as mentioned above conveying their acceptance of One Time Settlement of all the dues for Rs. 3000 lacs in full and final settlement of the Bank's dues be is hereby accepted and Mr. Sunder T. Vachani, Chairman-cum-Managing Director be and is hereby authorized to sign and convey the acceptance of the O.T.S. and the terms and conditions thereof on behalf of the Board of Directors of the Company.

Further resolved a certified copy of the above resolution be furnished to the Bank as desired".

13. From the aforesaid resolution, it transpires that some compromise terms were offered by the respondent Bank and the same were accepted by the Board of Directors of the Appellant No. 1. Therefore, I am not inclined to agree with the appellants that the respondent Bank obtained the consent decree by committing any fraud on the appellants or that the respondent Bank exercised any undue influence upon the appellants to agree to the compromise decree.

14. Regarding non-fulfilment of any term of the compromise by the respondent Bank, I may only say that such non-fulfilment, if any, cannot be a ground for setting aside the compromise decree. The appellants may press the point in execution if they have any such valid point.

16. Since appeal has been dismissed, all interim applications moved in this appeal stand disposed of without orders.

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