Usha (India) Ltd. Vs. Sidbi and ors.

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SooperKanoon Citation : sooperkanoon.com/56374

Court : DRAT Mumbai

Decided On : Aug-09-2004

Reported in : II(2005)BC5

Judge : P Upasani

Appellant : Usha (India) Ltd.

Respondent : Sidbi and ors.

Judgement :

1. This Misc. Appeal is filed by appellant/ original defendant No. 5 Usha (India) Ltd., being aggrieved by order dated 3.9.2003 passed by the learned Presiding Officer of the Debts Recovery Tribunal, Pune on Exhibit No. 49 in Original Application No. 117/2002. By the impugned order, the learned Presiding Officer rejected application made by appellant/original defendant No. 5 praying for stay of the proceedings which are initiated by respondent No. 1-Small Industries Development Bank of India (for the sake of brevity hereinafter to be referred to as 'SIDBI') on the ground that the appellant company is before BIFR and hence, they are logically entitled to protection under Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for the sake of brevity hereinafter to be referred to is 'SICA').

2. I have heard Mr. Raut for the appellants and Mr. Sanjay Krishna for the respondent No. 1 Bank. I have gone through the proceedings so also relevant provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and in

my view, there is no infirmity in the impugned order and the learned Presiding Officer has arrived at a correct conclusion.

3. Proceedings reveal that appellant company who is arraigned as defendant No, 5 in the original application initiated by SIDBI against the principal borrower/respondent No. 2 herein Pittie Agro Ventures Ltd., is a corporate guarantor and subject matter of the original application is loan/facilities granted to the principal borrower/defendant No. 1 company/ respondent No. 2 herein Pittie Agro Ventures Ltd. It is not that the principal borrower is before BIFR.Therefore, reliance upon the ratio of the Supreme Court judgment in the case of Patheja Brothers Forgings & Stamping and Anr. v. ICICI Ltd., V (2000) SLT 665=III (2000) CLT 179=AIR 2000 Supreme Court 2553, to the effect that protection should be given to the guarantors is misplaced.

Principal borrowers are not before the BIFR. Guarantors are before the BIFR. In Patheja Brothers' case (supra), principal borrower had approached the BIFR and it was held that if protection of the stay of the proceedings was granted to the principal borrower, then it should be extended to the guarantors also. This principle or dictum cannot be interpreted to mean that if a guarantor approaches the BIFR, protection should be granted to a principal borrower. This will be absurd and such an interpretation would be against the very spirit of the SICA.4. Provisions of Section 22(1) of the SICA can be reproduced below for the sake of convenience: (1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the windingup of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a Receiver in respect thereof (and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority." From plain reading of the above section, it is clear that the suit contemplated, of which stay is asked, must be a suit "in respect of any loans or advance granted to the industrial company". These words must be interpreted in proper perspective on the basis of the scheme underlying the Sick Industrial Companies (Special Provisions) Act, 1985. Admittedly defendant No. 5/appellant company is not an industrial company and has not been granted any loan. Loan is advanced to defendant No. 1/respondent No. 2-Pittie Agro Ventures Ltd. Principal borrower is not before the BIFR. Therefore, language of Section 22 of the SICA cannot be construed to mean that stay of the proceedings which are initiated by SIDBI against Pittie Agro Ventures Ltd., the principal borrower is required to be granted.

5. In the light of above discussion and aforesaid reasons, the impugned order will have to be upheld and this appeal will have to be dismissed.

Hence, following order is passed: 7. In view of this, M. A. No. 545/2003 also does not survive and is disposed of accordingly.