

State Bank of India and ors. Vs. Tamil Nadu Steels Ltd. and ors.

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SooperKanoon Citation : sooperkanoon.com/56607

Court : DRAT Madras

Decided On : Jun-26-2006

Reported in : IV(2006)BC89

Judge : K Gnanaprakasam

Appellant : State Bank of India and ors.

Respondent : Tamil Nadu Steels Ltd. and ors.

Judgement :

1. This appeal is directed as against the Order dated 30.9.2005 in OA-34/2001 passed by the DRT-I at Chennai.

2. Notice to the respondents were taken and respondents 1 and 2 were called absent and set ex parte on 17.3.2006. Respondent No. 3 is the Official Liquidator.

I have heard the learned Advocate for the appellants and also perused the appeal papers.

3. The learned Advocate for the appellants has raised two points to be decided in this appeal: (1) The Order passed by the DRT that the appellants should file their claim before the Official Liquidator after getting the Recovery Certificate is not proper; 4. M/s. Tamil Nadu Steels Ltd., which is the 1st respondent in the OA, went into liquidation and Official Liquidator was appointed. But, however, the appellants who are the consortium of Banks, have brought the action in OA-34/2001 for recovery of the amounts due to them by the 1st respondent. The DRT

decreed the OA. Relying upon the decision rendered by the Supreme Court in Allahabad Bank v. Canara Bank and Anr.

I (2000) BC 627 (SC) : III (2000) CLT 129 (SC) : 2000 (3) Supreme 205, DRT had observed that the leave of the Company Court is not mandatory for determining the debt under the Act or at the time of execution of Recovery Certificate issued, because the Debts Recovery Tribunal has been conferred, an exclusive jurisdiction to determine the debt due to the Bank and financial institutions and also to recover the same due under the Recovery Certificate. After having observed so, the DRT was of the view that by reading the Companies Act and also the RDDB & FI Act, 1993 harmoniously, after issuance of the Recovery Certificate, the Bank should file their claim before the Office of the Official Liquidator as the Official Liquidator had already taken charge of the assets and effects of the DI Company, and the same is under challenge in this appeal.

5. The learned Advocate for the appellants has submitted that the adjudication of the liability and execution of the Certificate in respect of debts payable to the Banks and financial institutions are within the exclusive jurisdiction of the DRT and, as such, the Company Court's jurisdiction under Sections 442 and 537 of the Companies Act, stands ousted. The leave of the Company Court is not necessary for initiating proceedings under the RDDB & FI Act. Even the claim of the various creditors can be decided only by the DRT in accordance with Section 19(19) of the RDDB & FI Act, read with Section 529A of the Companies Act, 1956, and in no other manner. The appellant derives support to state so, by relying upon the case of Allahabad Bank v. Canara Bank (supra), wherein it was held, "The provisions of RDB Act, 1993 confer exclusive jurisdiction in the Tribunal and the Recovery Officer in respect of debts payable to Banks and financial institutions and there can be no interference by the Company Court under Section 442 read with Section 537 or under Section 446 of the Companies Act, 1956.

In respect of the monies realised under the RDB Act, the question of priorities among the Banks and financial institutions and other creditors can be decided only by the Tribunal under the RDB Act and in accordance with Section 19(19) read with Section 529A of the Companies Act and in no other manner.... No leave of the

Company Court is necessary for initiating or continuing the proceedings under the RDB Act, 1993.

The appellant also brought to the notice of the Tribunal that in the case of International Coach Builders Ltd. v. Karnataka State Financial Corporation . a different view was taken than the one taken in Allahabad Bank case. But however, the Hon'ble Supreme Court (consisting of three Judges) had an occasion to consider both the decisions i.e. Allahabad Bank v. Canara Bank, (supra), and International Coach Builders v. Karnataka State Financial Corporation, (supra), in Rajasthan State Financial Corporation and Another v. Official Liquidator and Anr.

observed,"17.... We clarify that there is no inconsistency between the decisions in International Coach Builders Ltd. v. Karnataka State Financial Corporation in respect of the applicability of Sections 529 and 529A of the Companies Act in the matter of distribution among the creditors. The right to sell under the SFC Act or under the Recovery of Debts Act by a creditor coming within those Acts and standing outside the winding up, is different from the distribution of the proceeds of the sale of the security. The distribution in a case where the debtor is a company in the process of being wound up, can only be in terms of Section 529A read with Section 529 of the Companies Act. After all, the Liquidator represents the entire body of creditors and also holds a right on behalf of the workers to have a distribution *pari passu* with the secured creditors and the duty for further distribution of the proceeds on the basis of the preferences contained in Section 530 of the Companies Act under the directions of the Company Court. In other words the distribution of the sale proceeds under the direction of the Company Court is his responsibility. To ensure the proper working out of the scheme of distribution, it is necessary to associate the Official Liquidator with the process of sale so that he can ensure, in the light of the directions of the Company Court, that a proper price is fetched for the assets of the company-in-liquidation. It was in that context that the rights of the Official Liquidator were discussed in International Coach Builders Ltd. The Debts Recover Tribunal and the District Court entertaining an application under Section 31 of the SFC Act should issue notice to the Liquidator and hear him before ordering a sale, as the representative of the creditors in general." Then the Supreme Court has summed up the legal position

as follows: (i) A Debts Recovery Tribunal acting under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would be entitled to order the sale and to sell the properties of the debtor, even if a Company-in-liquidation, through its Recovery Officer, but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him.

(ii) A District Court entertaining an application under Section 31 of the SFC Act will have the power to order sale of the assets of a borrower company-in-liquidation, but only after notice to the Official Liquidator appointed by the Company Court and after hearing him.

(iii) If a financial corporation acting under Section 29 of SFC Act seeks to sell or otherwise transfer the assets of a debtor company-in-liquidation, the said power could be exercised by it only after obtaining the appropriate permission from the company Court and acting in terms of the directions issued by that Court as regards associating the Official Liquidator with the sale, the fixing of the upset price or the reserve price, confirmation of the sale, holding of the sale proceeds and the distribution thereof among the creditors in terms of Section 529A and Section 529 of the Companies Act.

(iv) In a case where proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or the SFC Act are not set in motion, the creditor concerned is to approach the Company Court for appropriate directions regarding the realization of its securities consistent with the relevant provisions of the Companies Act regarding distribution of the assets of the The learned Advocate for the appellants states that they have followed all the requirements of the Supreme Court and as a matter of fact, the Official Liquidator was impleaded as a party to the appeal also, and notice was taken to him. One Mr. B. Ramesh, Advocate, appeared on behalf of official liquidator before this Tribunal on 28.3.2006, and look time to file Vakalat, but not turned up. As such, I am of the view that the appellants have complied with the necessary requirements as set forth in Rajasthan State Financial Corporation and Anr. v. Official Liquidator and Another 6. As such, the observation of the DRT that the appellants have to file their claim before the official liquidator is incorrect and the same is set aside. On

the other hand, the official liquidator has to forward the claim of the priorities as contemplated under Sections 529 and 529A of the Companies Act to the Recovery Officer, and the same shall be taken into account by the Recovery Officer in distributing the sale proceeds.

7. But now the learned Advocate for the appellants has submitted that the properties were brought to sale by the official liquidator for a fair price and, therefore, the appellants are not willing to question the said sale and on the other hand, they have consent for the said sale and further proceedings shall be taken in accordance with law.

8. As far as the award of interest is concerned, it is contention of the learned Advocate for the appellants that no Bank is advancing interest @ 6% per annum simple and the amounts due to the Banks are public money and, therefore, the interest awarded is less. No doubt, it is the discretion of the Tribunal with regard to the awarding of interest for the pendente lite period and also post-dated period.

Several cases came before this Tribunal as far as the grant of interest is concerned complaining by one party that it is more and by the other it is less. In Housing and Urban Development Corporation Ltd. v. A to Z Builders Pvt. Ltd. RA-23/ 2004 and RA-27/2003, this Tribunal after taking into consideration all the elements involved in granting of interest and also several schemes floated by several Banks, such as, housing loan, vehicle loan, purchase of properties, where the rates of interest were ranging from 7.25% to 8.75 floating and 8.5% to 9.5% fixed, this Tribunal was inclined to grant interest @ 9.5% p.a. simple for the pendente lite period and also for the post-order period/decreed period. In accordance with the above said decision already taken by this Tribunal, I am inclined to enhance the interest from 6% p.a.

simple to 9.5% p.a. simple, from the date of filing of the suit till the date of realisation.

9. Both the questions raised by the appellants are answered accordingly and the appeal is disposed of accordingly.