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C.A.No. 2873 OF 1998

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2873 OF 1998

State Bank of IndoreAppellant

Versus

Commissioner of Payments & ors.....Respondents

With

C.A. No.2872/1998 and C.A. No.2871/1998

O R D E R

These Appeals can be disposed of by this common judgment as 11all of them are against the Judgment of the High Court dated 16.12.1997.

The question which arises for consideration is whether under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974 interest amounts, on loans advanced by Banks are to be paid in a priority. The relevant provisions of the Act are Sections 3, 4, 5, 8, 9, 21 and 27 which read as follows:

"3. Acquisition of rights of owners in respect of sick textile undertakings.- (1) On the appointed day, every sick textile undertaking and the right, title and interest of the owner in relation to every such sick textile undertaking shall stand transferred to, and shall vest absolutely in, the Central Government.

(2)Every sick textile undertaking which stands vested in the Central Government by virtue of sub-section (1) shall immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation.

4. General effect of vesting.- (1) The sick textile undertaking referred to in section 3 shall be deemed to include all assets, rights, lease-holds, powers authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possessions, power or control of the owner of the sick textile undertaking, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include the liabilities and obligations specified in sub-section (2) of section 5.

(2) All property as aforesaid which have vested in the Central Government under sub-section (1) of section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting it and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn.

(3) Where any licence or other instrument in relation to a sick textile undertaking had been granted at any time before the date on which the Ordinance was promulgated, to an owner by the Central Government or a State Government or any other authority, the National Textile Corporation shall, on and from such date be deemed to be substituted in such licence or other instrument in place of the owner referred to therein as if such licence or other instrument had been granted to it and shall hold such licence or the sick textile undertaking specified in such other instrument for the remainder of the period for which the owner would have held such licence or the sick textile undertaking under such other instrument.

(4) Every mortgagee of any property which has vested under this Act in the Central Government and every person holding any charge, lien or other interest in or in relation to any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, charge, lien or other interest.

(5)For the removal, of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (2) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights a

and interests, payment of the mortgage money or other dues, in whole or in part, out of the amount specified in relation to such property in the First Schedule, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government.

(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any matter specified in sub-section (2) of section 5 in respect of the sick textile undertaking, instituted or, preferred by or against the textile company, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the sick textile undertaking or of anything contained in this Act but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the National Textile Corporation.

(7) Any person, who, on the date on which the Ordinance was promulgated, was in possession of, or had under his custody or control, the whole or any part of any sick textile undertaking referred to in section 3, the management of which could not be taken over by the Central Government by reason of any decree, order or injunction of any Court or otherwise, shall deliver forthwith the possession of such undertaking or part and all books of account, registers and all other documents of whatever nature relating to such undertaking or part to the Central Government or the National Textile Corporation or such other person as the Central Government or the National Textile Corporation, as the case may be, may specify in this behalf.

5. Owner to be liable for certain prior liabilities.- (1) Every liability, other than the liability specified in sub-section (2) of the owner of a sick textile undertaking, in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation.

(2) Any liability arising in respect of -

(a) loans advanced by the Central Government, or a State Government, or both to a sick textile undertaking (together with interest due thereon) after the management of such undertaking had been taken over by the Central Government.

(b) amount advanced to a sick textile undertaking (after the management of such undertaking had been taken over by the Central Government), by the National Textile Corporation or by a State Textile Corporation or by both, together with interest due thereon.

(c) wages, salaries and other dues of employees of the sick textile undertaking, in respect of any period after the management of such undertaking had been taken over by the Central Government.

shall, on and from the appointed day, be the liability of the Central Government and shall be discharged, for and on behalf of that Government by the National Textile Corporation as and when repayment of such loans or amounts becomes due or as and when such wages, salaries or other dues become due and payable.

(3) For the removal of doubts, it is hereby declared that, ---

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability, other than the liability specified in sub-section (2), in relation to a sick textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the National Textile Corporation;

(b) no award, decree or order of any Courts tribunal or other authority in relation to any sick textile undertaking passed after the appointed day in respect of any matter, claim or dispute, in relation to any matter not referred to in sub-section (2), which arose before that day, shall be enforceable against the Central Government or the National Textile Corporation;

(c) no liability of any sick textile undertaking or any owner thereof for the contravention, before the appointed day, of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation.

Explanation.- In this section, "State Textile Corporation" means a corporation, formed and registered under the Companies Act, 1956, in a State, which is in charge of the management of a sick textile undertaking either as a person authorised under the Industries (Development and Regulation) Act, 1951, or as the Custodian under the Sick Textile Undertakings (Taking Over of Management) Act, 1972 and includes the West Bengal State Textile Corporation Limited which has advanced amounts to sick textile undertakings in the State.

8. Payment of amount to owners of sick textile undertakings.- The owner of every sick textile undertaking shall be given by the Central Government, in cash and in the manner specified in Chapter VI, for the transfer to and vesting in, it, under sub-section (1) of section 3 of such sick textile undertaking and the right, title and interest of the owner in relation to such si

ck textile undertaking, an amount equal to the amount specified against it in the corresponding entry in column (4) of the First Schedule.

9. Payment of further amount.- (1) In consideration of the retrospective operation of the provisions of sections 3, 4 and 5, there shall be given, in cash by the Central Government to the owner of every sick textile undertaking, the management of which was taken over by the Central Government, an amount equal to an amount calculated at the rate specified in section 6 of the Sick Textile Undertakings (Taking Over of Management) Act, 1972, for the period commencing on the appointed day and ending on the date on which the Ordinance was promulgated.

(2) In addition to the amount referred to in section 8, there shall be given by the Central Government, in cash, to the owner of every sick textile undertaking, simple interest at the rate of four per cent, per annum on the amount specified against such owner in the corresponding entry in column (4) of the First Schedule for the period commencing on the date on which the Ordinance was promulgated, and ending on the date on which payment of such amount is made by the Central Government to the Commissioner.

(3) The amount representing interest calculated at the rate specified in sub-section (2) shall be given in addition to the amount specified in the First Schedule.

21. Priority of claims.- The claims arising out of the matters specified in the Second Schedule shall have priorities in accordance with the following principles namely:-

(a) Category I will have precedence over all other categories and Category II will have precedence over category III and so on;

(b) the claims specified in each of the categories except Category IV shall rank equally and be paid in full, but if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly;

(c) the liabilities specified in Category IV shall be discharged, subject to the priorities specified in this section, in accordance with the terms of the secured loans and the priority interest of such loans, and

(d) the question of payment of a liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

27. Assumption of liability.- (1) Where any liability of the owner of a sick textile undertaking arising out of any item specified in Category I of the Second Schedule is not discharged fully by the Commissioner out of the amount paid to him under this Act, the Commissioner shall intimate in writing to the Central Government the extent of the liability which remains undischarged, and that liability shall be assumed by the Central Government.

(2) The Central Government may, by order, direct the National Textile Corporation to take over any liability assumed by that Government under sub-section (1) and on receipt of such direction, it shall be the duty of the National Textile Corporation to discharge such liability.

The Appellants filed claims before the Commissioner. The claims were not just for the loans amount but also for interest on such loans. The Commissioner disallowed claims for loans given prior to the date Management was taken over. The Commissioner allowed claims only for loans given during the period the Management was taken over and upto the appointed day.

The Appellants filed Appeals before the District Court. The District Court held that all amounts payable upto the appointed day fell in the Category I. The District Court however disallowed interest after 1st of April, 1974. The High Court has by the impugned Judgment upheld the order of the District Court.

The Respondents have not come in Appeal. Therefore, we are not concerned with the question as to whether or not amounts advanced prior to the taking over of the Management are to be paid in the priority. The only question for consideration is whether interest after 1st of April, 1974 upto the date the claim was made is payable in priority.

Strong reliance is placed upon the Judgment of the Bombay High Court in the case of State Bank of India vs. Edward Textile Mills Ltd. and another reported in AIR (1988) Bombay 313. In this case it has been held, after consideration of the various provisions of the Sick Textile Undertakings (Nationalisation) Act that the term liability includes liability for interest also.

It is held that the amounts which have to be paid in priority, under the Second Schedule, include not just the loan amounts but also the interest thereon upto the date of payment. The impugned Judgment runs contrary to this view.

A glance at the provisions of the Act, extracted hereinabove, shows that by virtue of Section 3 the right, title and interest of the owner in sick textile undertakings stands transferred

to and vests in the Central Government. Section 4 provides for the effect of such vesting. It shows that the liability, which vests in the Central Government, is only liability specified under sub-Section (2) of Section 5. This position is further clarified by Section 5(1) which states that except for liabilities mentioned in sub-Section (2) of Section 5 all other liabilities would continue to be the liabilities of the owner of the sick textile undertakings and shall be enforceable against the owner and not against the Central Government or the National Textile Corporation. Thus by virtue of Section 5(1) the remedy for recovery of any liability is against the owner. Undoubtedly, the word liability would include not just the loan amounts but also the amounts due by way of interest of such loan amounts.

Sub-section (2) of Section 5 specifies which the liabilities are taken over by the Central Government. Sub-section 2(a) talks of loans advanced by Central Government or State Government. Thus, the Legislature is now making a distinction between the terms "liability" and "loan". When the term "loan" is used it is specified that the loans would be "together with interest due thereon". The same clarification can be found even in sub-Section 5(2) (b). This indicates the intention of the Legislature. Thus even though the term "liability" includes liability for the interest amounts also, the term "loan" does not include the interest amount unless specified otherwise in the Act. This position is fortified by Section 9 wherein on the amounts paid to the owner interest at the rate of 4% is also payable. Thus, where the Legislature wanted to specify that certain amounts would carry interest it has done so specifically.

Section 21 provides that the amounts set out in the Second Schedule are to be paid in priority. The relevant portion of the Second Schedule reads as follows :

"THE SECOND SCHEDULE

[See sections 21, 22, 23 and 27]

Order of priorities for the discharge of liabilities in respect of a sick textile undertaking

PART A

Post-take-over management period

Category I.-

- (a) Loans advanced by a bank
- (b) Loans advanced by an institution other than a bank.
- (c) Any other loan.
- (d) Any credit availed of for purpose of trade or manufacturing operations.

Category II.-

- (a) Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.
- (b) Any other dues."

Thus, the heading of the Second Schedule provides "priorities for discharge of liabilities".

The term liability as stated above would include interest. It would include a loan. It would also include credits availed of. It would include Revenue, taxes, cesses, rates and other dues. However, the payment in priority is for a loan. The distinction in language makes it very clear that what was to be paid in a priority was only the amount of the loan i.e. the principal amount and not the interest amount due thereon. Of course, payments towards interest would remain liabilities. But for recovery of that the remedy would be to proceed against the owner/surety.

This Court has in the case of Industrial Finance Corporation of India Ltd. vs. Cannanore Spinning and Weaving Mills and others reported in 2002 (5) SCC 54 held that by virtue of the provisions of the Act the liability of the principal debtor and that of the surety does not come to an end. It is held that if the compensation to be paid by virtue of Section 21 and the Second Schedule, does not satisfy the full claim then the creditor is not barred from filing a civil suit for the balance. Further, in the case of Punjab National Bank vs. State of U.P. and others reported in 2002 (5) SCC 80 it has been held that even though mode of recovery, against a surety, may be affected the liability of the principal debtor and the guarantor does not get affected by the provision of this Act. Not only are these authorities binding us but we are in complete agreement with what is laid down therein.

It is thus clear that the interest amounts are not to be paid in priority under the provisions of this Act. In this view strictly speaking even interest upto 31st March, 1974 was not payable in priority. However, as the Respondents have not come up in Appeal we see no reason to interfere with that portion of the impugned Judgment which directs payments of interest upto 31st March, 1974.

For the above reasons, the Appeals stand dismissed. No order as to the costs.

.....J.
(S.N. VARIAVA)

.....J.
(H.K. SEMA)
NEW DELHI,
JANUARY 21, 2004.

ITEM No.101(PH)

Court No. 7

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

C.A.No.2873/1998

STATE BANK OF INDORE

Appellant (s)

VERSUS

COMMNR. OF PAYMENTS & ORS.

Respondent (s)

(with office report)

With

C.A.Nos. 2872/1998 and 2871/1998 (with office report)

Date : 21/01/2004 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s)Mr. A.K. Chitale, Sr. Adv.
Mr. Vikrant Singh, Adv.
Mr. Niraj Sharma, Adv.

For Respondent (s)Mr. L.N. Rao, ASG.
Mrs. B. Sunita Rao, Adv.

THE COURT MADE THE FOLLOWING JUDGMENT:

Mr. L.N. Rao, learned Additional Solicitor General resumed his arguments at 10.35 a.m. and concluded at 11.20 a.m. Thereafter, Mr. A.K. Chitale, learned senior counsel argued the matter in reply for about 10 minutes. Hearing concluded.

The appeals stand dismissed. No order as to cost.

(PAWAN KUMAR) (JASBIR SINGH)
COURT MASTER COURT MASTER
(signed order is placed on the file)