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C.A.No. 6545-6546 OF 1997
ITEM No.101(Part-Heard)

Court No. 8

SECTION IX

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

Civil Appeal No.6545-6546 of 1997.

AMBALAL SARABHAI ENTERPRISES LTD.

Appellant (s)

VERSUS

CENTRAL BANK OF INDIA & ORS.

Respondent (s)

(With appln.(s) for early hearing and with office report)

With SLP (C) CC 7439-7440/1997 (CC 7439-7440)

Date : 20/11/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s)Mr. T.R. Andhyarujina, Sr.Adv.
Mr. Pravin Bahadur, Adv.
Ms. Puja Sharma, Adv.
Ms.Meghalee Barthakur, Adv.
Mr.Rajan Narain, Adv.

For Petitioner (s)Mr. Joseph Vellapally, Sr.Adv.
SLP(C)...CC7439-40/97Mrs. Rohina Nath, Adv.
Ms. Malini Sud, Adv.
Mr. Umesh Kumar Khaitan, Adv.

For Respondent (s)Mr. Joseph Vellapally, Sr.Adv.
Mrs. Rohina Nath, Adv.
Ms. Malini Sud, Adv.
Mr. Umesh Kumar Khaitan, Adv. for
M/s Khaitan & Co.

Mr. V.R. Reddy, Sr. Adv.
Mr. Pramod B. Agarwala, Adv.
Ms. Praveena Gautam, Adv.
Mr. Sakya Singha Chaudhuri, Adv.
Dr. Manmohan Sharma, Adv.

Mr. T.R. Andhyarujina, Sr.Adv.
Mr. Pravin Bahadur, Adv.
Ms. Puja Sharma, Adv.
Ms.Meghalee Barthakur, Adv.
Mr.Rajan Narain, Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr. T.R.Andhyarujina, learned senior counsel appearing on behalf of appellants resumed his arguments at 10.35 A.M. and concluded at 11.55 A.M. Thereafter, Mr. Joseph Vellapally, learned senior counsel started his arguments and concluded at 12.30 P.M. Mr. V.R.Reddy, learned senior

counsel appearing for respondents started his arguments and concluded at 2.20 P.M. Thereafter, Mr. T.R. Andhwarjuna, learned senior counsel addressed the Court for ten minutes. The appeals are disposed of in terms of the signed order. There will be no order as to costs.

Anita (Jasbir Singh)
Court Master

(Signed order is placed on the file.)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6545-6546 OF 1997

Ambalal Sarabhai Enterprises Ltd.
...
Appellant (s)

Versus

Central Bank of India & Ors.
...
Respondent (s)

WITH

Civil Appeal Nos. 9212-9213 of 2003
(@ S.L.P. (C)....CC 7439-7440 of 1997)

O R D E R

Leave granted.

These appeals can be disposed of by this common order.

Briefly stated the facts are as follows:-

Pursuant to an earlier Scheme of amalgamation, with which we are not concerned, Ambalal Sarabhai Enterprises Limited ("ASE" for short) had amalgamated with one Swastik Household and Industrial Products Limited ("SHIP" for short). The said SHIP had held 94% shares of another company called WHITCO. As a result of the amalgamation ASE now held 94% shares in WHITCO.

On 25th February, 1986 Company Applications Nos. 36, 37 and 38 were filed for a Scheme of reorganisation of ASE by which three divisions of ASE were proposed to be formed into three separate companies viz., ASE, Sarabhai Surfuctants Limited (SSL for short) and Sarabhai Electronics Limited (SEL). In these Applications it was, inter alia, stated that no meeting of secured creditors such as bank and financial institutions need be held as it appears that these institutions will give their consent to the proposed Scheme. It was also, inter alia, stated that no meeting of ordinary creditors be called as the ordinary creditors were being paid at regular intervals and their liabilities were fluctuating. In view of these statements, the High Court did not call for meeting of secured creditors or ordinary creditors. Meetings were held of the share holdres, debenture holders and bond holders. Share holders, debenture holders and bond holders, by a 3/4th majority, approved the Scheme.

In the meantime ASE has been corresponding with the Bank of Baroda who was a lead bank in a consortium of nine banks which had advanced various facilities to ASE. ASE sought consent of the consortium of banks. The lead bank Bank of Baroda and some other banks gave consent subject to the other banks' also giving their consent. The Central Bank of India gave its consent in the following terms:-

"We refer to the reorganization resting with your letter dated November 19, 1986, on the above subject. We are pleased to inform you that we have considered your proposal and accordingly give our consent to the restructuring/reorganisation scheme of the Company, provided the principal Company in the ASE group after restructuring gives its guarantee for the outstanding dues of the division - Swastik Household and Industrial Products Division - (SHIP).

It is further stipulated that the principal company (ASE) should also give an undertaking to B

ank that the new Company (Re-Organised) will not seek any concessions or ask for funding etc., and in the event of the new Company continuing to incur losses, the same would be made up by the guaranteeing company."

Three banks, namely, Punjab National Bank, New Bank of India and Citi Bank never gave their consent. They however never objected either.

A learned Single Judge of the High Court sanctioned the Scheme on 24th December, 1987. It has been mentioned in the Judgment that the secured creditors had agreed to the proposal for the Scheme of arrangement. It is fairly admitted that it was not pointed out to the learned Single Judge that three banks had not consented and/or that Central Bank had given a conditional acceptance. It was also not pointed out that the other banks had given their consent subject to approval of all the other banks.

It must be mentioned that in spite of various advertisements issued by the Courts calling for objections, none of the banks who were part of the consortium filed any objection in Court. However, three parties had filed objections. It appears that ASE settled with those three parties. Therefore those parties did not press their objections. The Company Law Board also filed objections which were rejected by the learned Single Judge at the time the order sanctioning the Scheme was passed.

After the Scheme was passed, ASE again corresponded with the Bank of Baroda. Thereafter, on 23rd February, 1988 a meeting of the consortium of banks was held.

On 11th May, 1988, SSL made the reference before the BIFR for being declared as sick industrial company. It also appears that between ASE, SSL and one Mr. Satish Bhangar an agreement was entered into on 2nd August, 1988 by which the SSL stood transferred to Mr. Bhangar. It further appears that Mr. Bhangar has thereafter transferred SSL to one Mr. R.M.Shah on 19th May, 1989.

Before the BIFR, a Scheme for reconstruction was proposed. However, it was ultimately found that the Scheme was unworkable. Therefore, BIFR granted permission under Section 22 to Bank of Baroda and Central Bank of India to continue the suit which had been filed by them on 29th June, 1989. This suit had been filed for recovery of their dues from ASE and SSL. In the suit it is averred that the Scheme is not binding on these banks and that both these companies are liable to pay the dues of the bank.

The banks also filed an Appeal before the Gujarat High Court against the order dated 24th December, 1987 sanctioning the Scheme. Thereafter in 1993 they applied for condonation of delay in filing the Appeal. The delay came to be condoned by the Gujarat High Court and a Special Leave Petition against that order was dismissed by this Court. The Division Bench of the Gujarat High Court has thereafter by the impugned Judgment set aside the order sanctioning the Scheme on the ground that all material facts relating to the Company had not been disclosed to the learned Single Judge and also on the ground that the fraud had been played in not disclosing that the secured creditors had only given a conditional consent.

We have heard the parties at great length. In our view no fault can be found with the finding that the company had failed to disclose to the Court that the secured creditors had only given a conditional consent. Reading of the judgment of the learned Single Judge clearly indicates that the Court was under the impression that the secured creditors had consented to the Scheme. As stated above in fact three of the banks had not given consent at all. The Central Bank had required a guarantee to be given by ASE for all dues of Swastik Division. The other banks had given their consent subject to all the other banks agreeing.

As this finding cannot be assailed, in our view, it is not necessary for us to really consider whether ASE had not disclosed all relevant facts relating to it.

The question then arises whether the Scheme is to be maintained. In deciding this question, we have to keep in mind the fact that the Scheme was sanctioned as far back on 24th December, 1987. The banks were well aware that the Scheme has been so sanctioned. They did not immediately move to have the Scheme set aside. After the Scheme was sanctioned, the lead bank carried on corresponding with ASE. A meeting of the consortium of banks was held where, except for Citi Bank and New Bank of India no other bank objected to the Scheme having been sanctioned. Thereafter two banks, namely, Bank of Baroda and Central Bank participated in the proceedings before the BIFR. After almost a year these two banks asked for a guarantee from ASE. This came to be refused by a letter dated 16th January, 1989. It is only thereafter that these two banks filed the suit on 29th June, 1989. They filed their appeal on 9th March, 1990. They took out an application for condonation of delay three years thereafter. Undoubtedly delay has been condoned, but the facts still remain that in the meantime, third party rights have been created to the knowledge of the bank.

In our view, it would not be equitable at this stage to set aside the Scheme. At the same time the interest of these two banks must be protected. Before reorganisation they had security of all assets of ASE. By and under the Scheme their security is confined to assets of SSL. Central Bank was thus right in insisting on a guarantee by ASE. We are quite sure that had the Company fairly pointed out to the learned Single Judge that the consent was a conditional consent, in the Scheme itself a condition regarding giving of a guarantee by ASE for all dues of the Swastik Household and Industrial Products Limited would have been incorporated. In our view, it would be equitable, under these circumstances, to set aside the impugned Judgment and maintain the order sanctioning the Scheme with an additional condition of the Scheme that ASE shall execute within one month from today a guarantee as required by Central Bank. We are unable to accept submission that Central Bank was only asking for a guarantee for its dues. A plain reading of the letter of Central Bank shows that it was asking for a guarantee to cover all dues of the Swastik Division and for losses of the new Company i.e. SSL. It is now admitted that the suit filed by these two Banks is for recovery of losses of the Swastik Division. Therefore, in our view, ASE must execute a guarantee guaranteeing the dues in Suit No.2520/1989 filed by these two banks and which is pending before the Debts Recovery Tribunal, Mumbai. We so direct. The guarantee shall be executed within one month from today. On such guarantee being executed the impugned judgment will stand set aside and the order sanctioning Scheme with the additional condition set out herein above shall stand approved. In the event of a guarantee not being executed within time aforesaid, these Appeals shall stand dismissed without any further orders. With these directions, these Appeals stand disposed off. There will be no order as to costs.

.....J.

(S.N.Variava)

.....J.

(H.K.Sema)

New Delhi,
November 20, 2003.