

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2703 OF 1999

Bank of Madura Ltd.,

... Appellant

Vs.

National Textile Corporation Ltd. & Ors.

... Respondents

O R D E R

This appeal by special leave is against the judgment dated 17.6.1997 of the High Court of Madras in Writ Appeal No.932/1992, setting aside the order dated 4.3.1992 of the learned Single Judge in W.P. No.4218 of 1984, and restoring the order dated 4.9.1982 of the Commissioner of Payments in Claim Case No.1/IV/Sarada of 1977, which was affirmed by the District Judge, Coimbatore, as per judgment dated 23.8.1983 in Civil Misc. Appeal No.3 of 1983.

2. Sri Sarada Mills Ltd. (hereinafter referred to as 'the Company') obtained a mortgage loan of Rs.15 lakhs on 26.6.1968 from the appellant-

Bank. The Company had also drawn several Usance Bills on the appellant-

Bank during 1966 to 1968 towards the purchase of certain textile machinery, which were accepted and paid by the appellant-Bank in terms of agreements/deferred payment guarantees/undertaking executed by the Company on 16.5.1967, 16.5.1967 and 12.1.1968 for Rs.1,97,937/-, Rs.2,37,032/- and Rs.4,44,357.38.

3. The Company became sick and its management was taken over by the National Textile Corporation Ltd., the first respondent herein, ('NTC' for short) on 31.10.1972 under the provisions of the Sick Textile Undertakings (Taking over of Management) Act, 1972. Subsequently, the textile undertaking of the said Company was nationalized with effect from 1.4.1974, and consequently, the textile undertaking along with the right, title and interest of the owner in relation to such undertaking stood transferred to and vested in the Central Government and immediately thereafter in NTC, under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974 ('Act' for short). The Central Government paid a sum of Rs.50,31,000/- to the company (owner of the said textile undertaking) for the transfer and vesting of the sick textile undertaking as also the right, title and interest of the owner relating thereto under Section 8 of the Act.

3

4. Section 17 of the Act requires the entire

consideration/compensation amount to be paid to a Commissioner of Payments appointed. Every person having a claim against the owner of the sick textile undertaking, had to prefer claim/s before such Commissioner within the time prescribed. This was because what was taken-over were the assets of the undertaking and not the liabilities of the company. Under Section 5 of the Act clarified that every liability of the owner of the sick textile undertaking (other than the liabilities specified therein) in respect of any period prior to the appointed day, was the liability of such owner and shall not be enforceable against the Central Government or NTC.

4.1) Section 21 of the Act provided that the claims arising out of the matters specified in the Second Schedule shall have priorities in accordance with the following principles :

"(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 inter se 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."

4.2) The Second Schedule to the Act lists the order of priorities for the discharge of liabilities in respect of a sick textile undertaking as follows :

"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.

PART B

Pre-take-over management period

Category III. -

Arrears in relation to provident fund, salaries and wages, and other amounts, due to an employee.

Category IV. -

Secured loans.

5

Category V. -

Revenue, taxes, cesses, rates or any other dues to the Central Government, a State Government, a local authority or a State Electricity Board.

Category VI. -

- (a) Any credit availed of for purpose of trade or manufacturing operations.
- (b) Any other dues."

4.3) Section 22 required the Commissioner to arrange the claims received in the order of priority specified in the Second Schedule and examine the same in accordance with the said order. Sub-section (2) of Section 22 provided that if after such examination of the claims, the Commissioner was of the view that the amount paid to him under the Act was not sufficient to meet the liabilities specified by any lower category, he shall not be required to examine the liabilities in respect of such lower category.

4.4) Section 27 provided that where any liability of the owner of a sick textile undertaking arising out of any item specified in Category I of the Second Schedule was not discharged fully by the Commissioner out of

the amount paid to him under the Act, the Commissioner shall intimate in writing to the Central Government the extent of the liability which

6

remained undischarged, and that liability shall be assumed by the Central Government.

5. The appellant-Bank lodged its claim for Rs.37,88,229.97 with the Commissioner of Payments on 28.4.1977. The Commissioner, while arranging the claims category-wise, found that it fell under Part B of Second Schedule. As a consequence, the Assistant Commissioner of Payments sent a communication on 27.9.1979 to the appellant to the effect that its claim which was a pre-take-over management period liability stood excluded under Section 22(2) of the Act. That order was challenged by the appellant in Civil Misc. Appeal No.28 of 1981 on the file of the District Judge, Coimbatore, contending that its claim, being towards loans advanced by a Bank, ought to have been considered under Category I of the Second Schedule. The Appellate Authority allowed the said appeal by order dated 25.9.1981. He accepted the appellant's contention that being a Bank, its claim ought to have been considered under category I of the Second Schedule. He observed that :

"the order passed by the lower court without abating in equal proportions and making the payment accordingly, as contemplated under Section 21(a) and (b) of the Act is wrong and, hence, the entire matter has to be remanded to the lower court for fresh disposal according to law, as contemplated under Section 21(a) and

(b) of the Act. If the amount is insufficient to meet the claims of the appellant in full, as observed in the impugned order, the learned Assistant Commissioner is hereby directed to abate the claims of all

7

the applicants under Category I in equal proportions and pay the amounts accordingly to the appellant whose claims fall under Category I of the Second Schedule to the Act."

He did not, however, examine which part of the claim of the appellant related to post-take-over management period and which part of the claim related to pre-take-over management period. He remitted the matter to the Commissioner for fresh disposal according to law and the observations made by him in the said order.

6. The Commissioner of Payments considered the claim of the appellant on merits and passed an Award dated 4.9.1982 holding that the liability towards the appellant was incurred by the company in the pre-take-over management period and, therefore, the claim did not fall under Category I but under category IV. He further held that the compensation amount was insufficient to warrant the consideration of the claims below Category III and therefore, the appellant's claim could not be considered any further. The said award was challenged by the appellant in Civil Misc. Appeal No.3 of 1983 on the file of the District Judge, Coimbatore, who by his judgment dated 23.8.1983, dismissed the appeal and confirmed the

order of the Commissioner of Payments.

8

7. Feeling aggrieved, the appellant filed W.P. No.4218 of 1984 in the High Court of Madras. A learned Single Judge allowed the said writ petition vide order dated 4.3.1992. He held that the appellate authority vide order dated 25.9.1981 had held that the claim of the Bank had to be considered under Category I and, therefore, on remand, the Commissioner could not have held that the claim did not fall under Category I. As a consequence, the learned Single Judge directed the concerned authority to again consider the matter under Category I. That order was challenged by the first respondent (NTC) in W.A. No.932 of 1992. A Division Bench of the Madras High Court allowed the said appeal. It held that the direction that the order dated 25.9.1981 of the District Judge, Coimbatore directing that the claim of the appellant should be considered under Category I, was contrary to and in violation of the provisions of the Act and in view of the further direction that the matter should be considered in accordance with the law, the Commissioner of Payments was justified in re-examining the matter with reference to the provisions of the Act and holding that the claim fell under Category IV. Consequently, the order of the learned Single Judge was set aside and the order dated 4.9.1982 of the Commissioner of Payments, as affirmed by the District Judge, was restored, reserving the liberty to the Company to work out its remedies against the appropriate person in accordance with law. The said order is

challenged in this appeal.

8. We have considered the submissions of the learned counsel and examined the matter. The appellant lodged a claim for Rs.37,98,229.97 before the Commissioner of Payments. The amount claimed was made up of Rs.33,29,991.01 (due as on 3.2.1976) due in respect of a loan granted on 26.6.1968 secured by a mortgage, and Rs.4,17,055.79 due on regard to usance bills drawn by the company upon the appellant and paid by the appellant in terms of three agreements/guarantees executed by the company on 16.5.1967, 16.5.1967 and 12.1.1968. The balance of the claim was made up of three amounts (Rs.18,789.95, Rs.11,386.03 and Rs.11,007.19) also said to be due in respect of usance bills accepted and paid by the appellant on behalf of the Company under the said guarantee agreements. With reference to the particulars given in the said affidavit, the Commissioner of Payments in his award dated 4.9.1982, recorded a finding that the claims of the Appellant were pre-take-over management period liabilities falling under Category IV and not post-take-over management liabilities falling under Category I. This finding of fact was affirmed by the appellate authority in its order dated 23.8.1983.

9. Learned counsel for the appellant could not find any fault in the

factual position that the liabilities arose during the pre-take over of management period (except a small amount of Rs.41,183.17 which allegedly became due in the post-take-over period, in regard to the usance bills issued under documents executed in the years 1967 and 1968. In the circumstances, the finding of the Commissioner of Payments, as affirmed by the appellate authority that the amounts claimed by the Bank are pre-take-over management liabilities, cannot be faulted. It would, therefore, mean that the claims would fall under Category IV if they are secured loans and Category VI if they are unsecured loans.

10. But the sole contention of the appellant in this appeal is that in an earlier round of litigation, the appellate authority by order dated 25.9.1981 had held that the claims of the appellant fell under Category I; and that order having become final, the Commissioner who was considering the matter on remand in pursuance of the order dated 25.9.1981, could not have gone beyond the scope of the order of remand and hold that the claim of the appellant did not fall under Category I. It contended that the category of claim was decided by the appellate authority by order dated 25.9.1981 and all that was left for the decision of the Commissioner was the actual quantum and apportionment under Section 21(b) of the Act. It is on this limited ground, they have approached

11. The Scheme of the Act requires the Commissioner to first arrange the claims received in the order of priority specified in the Second Schedule and then examine the same in accordance with the said order. This would mean that when he arranges the claims, he does not examine the correctness or tenability of the claim/s. He merely categorises them on the basis of the averments in the claim. It is only thereafter that he examines the claims by examining the material placed in proof of the claim/s. In the first instance, apparently the Assistant Commissioner placed the appellant's claim in Category IV without examining the merits of the claim. At that stage itself, the appellant-Bank challenged the said categorization by filing Civil Misc. Appeal No.28 of 1981. It is in this background, the appellate authority in its order dated 25.9.1981 did not consider the claim on merits but merely proceeded to direct that it should be considered along with Category I claims. The order dated 25.9.1981 of the appellate authority entitled the claimant to get its claim examined along with other claims in Category I. But the order of remand dated 25.9.1981 did not mean that the Commissioner could not examine the correctness of the claim or the actual categorization on remand. As stated above, the initial categorization was made without examining the claim on

merits. Thereafter, all the claims filed against the sick textile undertaking

falling in a particular category were taken up and examined. If the compensation amount got exhausted in respect of the claims in a particular category, the Commissioner need not go to the lower category of claims at all. Therefore, the purport and effect of order of the appellate authority dated 25.9.1981 was that the Bank's claim should be examined while examining the other Category I claims instead of refusing to examine it by putting it in Category IV. But the order of remand did not mean that on such examination with reference to facts, even if the Commissioner found that the claim was not genuine or valid or that it related to a pre-take-over liability period, he could not refuse to allow it under Category I. The learned Single Judge has not appreciated the scheme of the Act in construing the remand order dated 25.9.1981. The remand order, when carefully examined, shows that there was no consideration of the claim at all by the Appellate Authority. The first para of the remand order refers to the order made by the Assistant Commissioner on 27.9.1979. Para (2) refers to the contention of the appellant that its claim should have been considered under Category I as it is a Bank. Para (3) refers to the finding of the Assistant Commissioner that the claim of the appellant stood excluded under Section 22(2) of the Act. Para (4) sets down the point for consideration. Para (5) states that the claim should be considered under Category I. Para (6) of the order directs how the Commissioner should

proceed with category I claims under Section 21(a) and (b). Para (7) is the remand order. The order nowhere considers the nature of the claim or whether the amount claimed was really due or not, or whether it was a pre-take-over management period liability or post-take-over management period liability. The remand order, therefore, required the Commissioner to consider the claim on merits, in view of the contention that it fell under category I instead of refusing to consider the claim at all on the ground that it fell under a lower category. That was done by the Commissioner in his award dated 4.8.1982 and it was rightly held that the claim did not fall under Category I, being a pre-take-over management period liability. As noticed above, the Commissioner examined the claim with reference to admissions made in the affidavit filed on behalf of the Appellant Bank. The Commissioner did not exceed his jurisdiction, nor violated the remand order.

12. We, therefore, find that the order of the Division Bench upholding the order of the Commissioner of Payments, does not call for interference though on slightly different reasoning. The appeal is, accordingly, dismissed.

..J.

.....

(Arun Kumar)

.....J.

.....

(R V Raveendran)

NEW DELHI,

March 2, 2006.

ITEM NO.108

COURT NO.10

SECTION XII

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(s). 2703 OF 1999

BANK OF MADURA LTD

Appellant (s)

VERSUS

NATIONAL TEXTILE CORPN. & ORS.

Respondent(s)

(With office report)

Date: 02/03/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN KUMAR

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Mr. K.K. Mani, Adv.

Mr. Mayur R. Shah, Adv.

Mr. K.B. Sandhu, Adv.

Mr.R.K.Pandey, Adv.

15

For Respondent(s)

Mr.M.N.Rao, Adv.

Mr.Sushil Kr.Pathak, Adv.

Mrs.B.Sunita Rao,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

(Satish K. Yadav)

Court Master

(Phoolan Wati Arora)

Court Master

(Singed order is placed on the file)