(1996) 08 P&H CK 0156

In the Punjab And Haryana At Chandigarh

Case No : Company Appeal No''s. 16 and 17 of 1995 in C.P. No''s. 155 and 156 of 1994

Corporation Bank — APPELLANT

Vs

J.B. Paper Mills — RESPONDENT

Date of Decision : 03-08-1996

Acts Referred:
Companies Act, 1956 — Section 446

Citation : (1998) 91 CompCas 491

Hon'ble Judges : Sat Pal, J;M.L. Koul, J

Bench : Division Bench

Advocate : A.P. Jagga, for the Appellant; Official Liquidator, for the Respondent

Judgement

Sat Pal, J.—By this judgment, we are disposing of two appeals bearing Company Appeal No. 16 of 1995 and Company Appeal No. 17 of 1995 as both the appeals are directed against the common judgment dated April 27, 1995, passed by the learned company judge in C. P. Nos. 155 and 156 of 1994.

2. Briefly stated, the facts of the case are that the appellant, Corporation Bank (hereinafter referred to as "the bank"), had filed a petition u/s 446 of the Companies Act (hereinafter referred to as "the Act"), wherein it was prayed that the bank be permitted to proceed with Civil Suit No. 345 of 1993 and Civil Suit No. 365 of 1993 filed against J. B. Paper Mills Ltd. (in liquidation) and others and which were pending in the High Court of Delhi. Notice of the petition was issued to the official liquidator by the learned company judge. The official liquidator submitted that he had no objection to the continuation of the suits. He, however, contended that it would be difficult for the official liquidator to defend the suits in the courts at Delhi due to shortage of funds as well as manpower and it would be in the interest of justice that the civil suits filed by the bank which are pending in the High Court of Delhi were transferred to this court. By the impugned judgment, the learned company judge accepted the contentions of the official liquidator and ordered to transfer the aforesaid two suits pending in the Delhi

High Court to this High Court for continuation. The Registry of the Delhi High Court was directed to transfer the files of the said suits to this court. Aggrieved by this judgment, the present appeals have been filed.

3. Mr. Jagga, learned counsel appearing on behalf of the bank, submitted that the bank is a secured creditor and one of the securities happened to be the House No. C-93, Defence Colony, New Delhi. He, therefore, contended that it would not only be just and convenient but also proper for the suits to be conducted in the High Court of Delhi. He submitted that the convenience of the official liquidator alone should not be the concern. Learned counsel submitted that the part of the judgment of the learned company judge, by which the suits have been transferred to this High Court was liable to be set aside. In support of his submission, learned counsel placed reliance on a judgment of the Supreme Court in Central Bank of India v. Elnwt Engineering Co. [1994] 81 Comp Cas 13 ; [1994] ISJ 664. The official liquidator who appeared in person reiterated the submissions made before the learned company judge.

4. We have given our thoughtful consideration to the submissions made by learned counsel for the appellant and by the official liquidator and have perused the records. In this case, the appellant-bank admittedly is a secured creditor. The suits filed by the appellant-bank for recovery of more than rupees eight crores are for the enforcement of the equitable mortgage. Admittedly, the mortgaged property is situated at New Delhi. Such suits are not likely to involve a long drawn out trial. In view of the facts and circumstances of this case, we are of the considered opinion that the order of transfer of the suits from the High Court of Delhi to this court cannot be sustained as the transfer will result in greater expenditure to the appellant-bank which certainly is avoidable. The view we have taken finds full support from the judgment of the Supreme Court in Central Bank of India v. Elmot Engineering Co. [1994] 81 Comp Cas 13. In that case, where the facts were similar to the facts of this case, the Supreme Court held that "this transfer will result in greater expenditure to the appellant-bank which certainly is avoidable than the wasteful expenditure to the official liquidator."

5. For the reasons recorded hereinabove, both the appeals are allowed and that part of the impugned judgment directing the transfer of suits is set aside. We make it clear that we are not interfering with the grant of leave in favour of the appellant-bank to continue the suits. The parties are, however, left to bear their own costs.