(2004) 07 GUJ CK 0023

In the Gujarat High Court

Case No : Company Petition No. 131 of 2004

Gujarat Lease Financing Ltd.

Date of Decision : 12-07-2004

Acts Referred:
Companies Act, 1956 — Section 391, 393

Citation : (2005) 62 SCL 511

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Swati Soparkar, for the Appellant;

Judgement

K.A. Puj, J.—This petition is filed u/s 391 of the Companies Act, 1956 for sanction of a scheme of compromise with the consortium of 16 Banks being the Secured Creditors of the petitioner Company.

2. The petitioner Company is a public limited Company which is engaged in the field of financial services. It is a Non-Banking Financial Company (NBFC) and had a good track record till 1996 - 97. However, Company''s position dramatically changed since 1997- 98. A lot of factors contributed to the downfall of NBFC industry. During that period, various sectors of Indian economy were going through recessionary conditions and the industrial activity slowed down due to law GDP growth, sagging markets, low investor confidence, etc. A number of NBFCs were downgraded by the rating agencies leading to an overall drop in investor confidence. In order to safeguard the interest of public, especially the small investors, Reserve Bank of India (RBI) imposed stringent policies and conditions on NBFC. The Banks and financial institutions developed negative attitude towards NBFC industry. All these factors led to reduced availability of long term funds to NBFCs and they had to depend on high cost short term funds. Over and above this, Banks and multi-National Companies started lending aggressively in retail sector and as a result thereof, the return on funds dropped from typically 22-24% to 16-17% while cost of funds continued to be in the range of 15-16%. This has adversely affected to all NBFCs in general and the petitioner Company to a great extent in particular. The Company''s financial

position deteriorated considerably in 1997-98 and the rating agencies downgraded the rating of the petitioner Company to below the investment grade. Moreover, a large number of its lease and hire purchase debtors defaulted on payment and this has adversely affected the availability of funds to the Company and in the absence of sufficient funds, the Company conducted negligible business from September, 1997 onwards. The Company has incurred a substantial loss of Rs. 39 Crore in the year 1997 and since then the Company has made the provisions continuously for non-performing assets and has written off the debts of substantial amount.

3. In the above background, the Company felt need for reconstruction and has taken some major steps to realize the maximum possible amount from the debtors. The Company has also applied the funds so realized for the repayment of its liabilities and thereby it has paid off many of its liabilities. The Company proposed a scheme of compromise with its ''E'' and ''F'' series Debenture holders held by a large number of small investors and general public and upon the same being sanctioned by this Court vide order dated 28.01.2002, paid an amount of more than Rs. 57 Crores to these Debenture holders. The Company also repaid a major part of the liabilities towards the Secured Creditors comprising of Consortium of Banks as well as ''G'' Series Debenture holders. The total amount payable to the Banks as on 01.04.1999 is Rs. 196.57 Crores. As against this, the Company has already paid of Rs. 113.11 Crores till date. Thus, the Company has paid of 57.54% of its total dues towards the Consortium of Banks. Similarly, out of its total liability of Rs. 24.75 Crores as on 01.05.1999, towards the ''G'' series Debenture holders, the Company has already paid off Rs. 12.76 Crores, which is 51.57% of the total dues towards the ''G'' series Debenture holders. The total amount payable to the Banks and the ''G'' series debenture holders was initially proposed to be frozen at 60% of the outstanding amount as on 31.03.1999 in case of the Banks, and 60% of the outstanding amount as on 01.05.1999 in case of the ''G'' series Debenture holders. The balance amount would be required to be waived.

4. The Company, therefore, presented a proposal of compromise for (i) the Consortium of Banks and (ii) debenture holders of ''G'' series. The proposed Scheme of Compromise was an attempt to protect and reinforce the interest of the Bankers and G-series debenture holders. At the meeting of the Consortium of Banks, convened for the purpose of obtaining the approval of the parties to the compromise, in pursuant to the directions issued by this Court, the scheme was not approved by the requisite statutory majority. However, at the meeting of the G-series debenture holders, after deliberations and discussions at length, modifications were suggested and the same were accepted by the Company, which was that "Against the total amount payable to them as on Appointed date a total amount of 65% (including the amount paid after the Appointed date and upto the Effective date) shall be paid in full and final payment of the amount payable to them." The petition for the sanction of this Court to this revised scheme with the ''G'' series debenture holders was filed and vide order dated

05.12.2003 passed by this Court (Coram :- K.M. Mehta, J.) the said scheme was sanctioned and pursuant to the said order, the Company has already paid off the dues of the ''G'' series debenture holders.

5. The Board of Directors of the petitioner Company has thought it appropriate to present a revised proposal of compromise for the Consortium of Banks and accordingly, the Company took the decision to propose a scheme of compromise between the Company and the Consortium of Banks on the broad basis referred to in the original Scheme of Compromise and the Company has proposed to meet the liability as full and final payment of the creditors being the Consortium of 16 Banks in the following proportion and in the following manner :-

"Against the total amount payable to them as on Appointed date a total amount of 65% (including the amount paid after the Appointed date and up to the Effective date) shall be paid in full and final payment of the amount payable to them."

6. The petitioner Company filed an application before this Court being Company Application No. 522 of 2003 for convening a meeting of the Consortium of Banks of the Company for the purpose of considering and approving with or without modifications the Scheme of arrangement of the petitioner Company with secured creditors i.e. Consortium of Banks. While disposing of the said application, this Court (Coram :- M.S. Shah, J.) vide order dated 14.11.2003 directed the petitioner to convene the meeting of the Consortium of the Banks of the Company for the purpose of considering and if thought fit, approve with or without modifications the said compromise or arrangement. The notice of meeting was sent individually to all the Consortium of the Bank as required by the order together with copy of scheme of compromise and the explanatory statement required u/s 393 of the Act and a Form of Proxy. The notice of the meeting was also advertised as directed by the said order in ''The Indian Express'' and ''Jansatta'', both Ahmedabad Editions dated. 20.11.2003.

7. On 13.12.2003, the said meeting of the Consortium of Banks was duly convened in accordance with the directions given by this Court and the representatives of Bank of India as a leader of the Consortium of Banks made an oral request for an adjournment which was supported by some of other Bankers present at the meeting in order to consider the proposal of the Company and to undertake negotiations for improving the said proposal. Considering the request of the majority of the members present and with the unanimous consent of all the representatives present, the said meeting was adjourned to 15.01.2004. On 15.01.2004, an oral request was made by the Bank of India, as a leader of the Consortium of Banks and same was supported by some other Banks to adjourn the said meeting for the purpose of considering the scheme with or without modifications and it was adjourned to 31.01.2004. On 31.01.2004, some of the Banks still awaited final approval of the scheme from the respective Head Office and at the request of the Company and with the consent of the majority of the member Banks present at the said meeting, the meeting was further adjourned

to 20.02.2004. Since the approval were not received by the members of the Consortium of Banks from their Head Offices, the meeting was again adjourned to 06.03.2004 and thereafter on 22.03.2004. On 22.03.2004, it was decided that the Company, Bank of India and Central Bank of India may jointly move this Court to allow the appropriation of amount lying in Escrow account to the member Banks equitably and the said appropriation was approved by all the members. In absence of the approvals from the Head Office, the meeting was adjourned to 10.04.2002. This Court passed an order on 31.03.2004 permitting the Company to pay Rs.664.54 Lacs to member Banks and accordingly, the Company has paid the said amount. On 10.04.2002, the meeting was again adjourned to 08.05.2004. However, in the said meeting, it was recorded that based on Company''s application having been allowed the appropriation of the amount lying in Escrow account was effected in favour of the member Bankers equitably. On 08.05.2004, an amended proposal was put forward by the Company before the members of the Consortium Banks and it was unanimously decided to put the amended scheme to vote. The amended proposals are as under :-

(1) "Against the total amount payable to them as on Appointed date a total amount of 65% (including the amount paid after the Appointed date and up to the Effective date) of the amount payable to them shall be paid.

(2) In addition to this, the company shall unconditionally, irrevocably and permanently transfer all its existing assets, receivables, stock on hire/lease, current assets, loans and advances in respect of assets charged to Banks along with rights arising from the pending litigations initiated by the Company against its various debtors including the decrees obtained (hereinafter collectively referred to as "the assigned assets") for the benefit of -

(a) The consortium of bankers and

(b) The G series debenture holders (hereinafter, both referred as "the beneficiaries" for the purpose specified hereinafter,

(3) Necessary formalities required for the purpose of effectuating such transfer shall be decided as a part of the scheme or subsequent to its sanction.

The same may include setting up "Special Purpose Vehicle" (SPV) where all the beneficiaries shall be the beneficiaries on pro rata basis. However, in case of failure in setting up such SPV, the transfer shall be effected in the following manner.

The assigned assets shall be transferred to and vest in Bank of India or any other bank or any other company, as may be decided unanimously or by majority of the member banks (hereinafter referred to as "the agent") who may take or continue the action against the debtors covered under the assignment including to participate in the recovery/litigation, and on realization of the debts. The said agent or the company, as the case may be, shall arrange to deposit the said realization in a separate Escrow Account, and after making provision for the expenses incurred for the said recovery, shall apportion and allocate the balance amount to the beneficiaries in the ration of their balance outstanding dues.

(4) On payment of 65% as per clause (1) hereto and assignment as per clause (2) or (3) hereto, all the liabilities and obligations of the Company against each of the Beneficiary shall stand discharged and no beneficiary shall have any claim whatsoever against the company."

7. 12 members having the value of Rs. 14,222 Lakhs voted in favour of the proposed modified scheme of compromise or arrangement being adopted and carried and two members having value of debt of Rs. 2230.63 Lakhs voted against the proposed modified scheme. One affidavit, namely, Vijaya Bank, entitled to Rs. 808.50 Lakhs being the total value of its debts, was held to be invalid as the ballot paper did not indicate whether the Bank was in favour or against the proposed resolution. The Chairman of the meeting has, therefore, reported that the Resolution proposed at the said meeting was carried by 86.67% in number and by 86.44% in value of the members present at the said meeting and hence, the proposed scheme of compromise with the Consortium of Banks stands approved in its modified mode.

8. The petitioner, thereafter, filed this petition on 14.06.2004 and this Court has admitted the petition on 15.06.2004 and admission of the petition was ordered to be advertised in ''Indian Express'' - English Daily and ''Jansatta-Loksatta'' Gujarati Daily, both Ahmedabad editions. Publication in Govt. Gazette was dispensed with and notice of admission was also issued to the Central Government. The petition was ordered to be heard on 01.07.2004.

9. After admission of the petition, the petition was advertised in ''Indian Express''- English Daily and ''Jansatta-Loksatta'' - Gujarati Daily , both Ahmedabad editions on dated 17.06.2004 and affidavit of publication along with the Newspaper cuttings containing the said advertisements was filed on 25.06.2004.

10. Notice was duly served on the Central Government and pursuant to the said notice, Ms. P.J. Davawala, Addl. Central Government Standing Counsel appearing for the Central Government has informed the Court and has placed on record the letter from the Registrar of Companies of Gujarat dated 07.07.2004 along with the letter from the Regional Director dated 06.07.2004 indicating that the Central Government does not propose to object to the proposed scheme of compromise. Even after publication of the advertisements, no one has come forward to oppose the present scheme of compromise and arrangement. The dissenting members of the Consortium who have cast their votes against the proposed modified scheme have chosen not to appear before the Court.

11. I have heard Mrs. Swati Soparkar, learned advocate appearing for the petitioner Company. I have also gone through the memo of the petition and the original as well as modified scheme of compromise attached along with the

petition. I have perused the report of the Chairman of the meeting submitted on the record of the Company Application No. 522 of 2003 from time to time. I have also gone through the additional affidavit dated 04.07.2004 along with which the latest balance-sheet of the Company as on 31.03.2004 is placed on record. Since the requisite majority has already sanctioned the scheme and the scheme has in fact been substantially implemented, though under the order of the Court and since the dissenting members have chosen not to appear though the scheme may cause some prejudice to them, the Court hereby sanctions the scheme of Compromise. The Court, however, takes note of the fact that outstanding amount of Rs.19657.34 Lakhs as on 01.04.1999 has been frozen and it has been compromised by the members of the Consortium Bank for the amount of 65% including the amount paid after the Appointed date and upto the Effective date in full and final settle of their claim. It is true that as per the modified scheme, in addition to the amount, the petitioner Company has agreed to unconditionally, irrevocably and permanently transfer all its existing assets, receivables, stock on hire/lease, current assets, loans and advances in respect of assets charged to Banks along with rights arising from the pending litigations initiated by the petitioner Company against its various debtors including the decrees obtained for the benefit of the Consortium of Bankers and the G series debenture holders. However, details of these assigned assets are not before the Court. On the pointed query raised by the Court, Mrs. Soparkar has submitted that the members of the Consortium Banks are informed that necessary formalities required for the purpose of effectuating such transfer would be decided as a part of the Scheme or subsequent to its sanction and for this purpose, "Special Purpose Vehicle" will be setting up where all the beneficiaries shall be the beneficiaries on pro rata basis. Even in case of failure in setting up such SPV, necessary modality has been thought of and discussed. Though it is the wisdom of the members of the Consortium Banks to agree to the scheme of Compromise in question, the hard reality cannot be lost sight of that the debts are frozen on 31.03.1999 and that too 65% thereof were to be received after almost a period of five years. The collosal loss of interest and reduction in the principal amount to the members of the Consortium Bank has not been satisfactorily explained. One thing is certain that Bankers are not dealing with their own money. It is ultimately the investor''s and depositor''s money lying with them which they are financing to the big Companies and Corporations like the petitioner. Instead of enforcing the effective recovery and utilizing the money for the poor, downtrodden and neglected sector of the society, firstly providing finance to such big Companies and thereafter, writing them off under the guise of such Schemes, can never be encouraged or entertained. However, in the present case, since the Scheme is agreed by the requisite majority and it has already been substantially implemented and since the dissenting members have not come forward to persuade the Court not to sanction the scheme, the Court hereby sanctions the Scheme in the larger interest of all as canvassed before the Court. The modified Scheme of Compromise referred to in para 14 of this petition and being Exhibit "C-1" hereto be sanctioned by this Court so as to be binding on all the members of the Consortium of banks of the petitioner Company and on the petitioner Company.

12. The Court''s attention is drawn to the proceedings undertaken by the petitioner Company vide Company Application No. 79 of 2004. Mrs. Swati Soparkar, learned advocate appearing for the petitioner Company has pointed out that pursuant to the order dated 10.04.2003 passed by this Court in Company Application No. 191 of 2003, a separate Bank Account referred to as Escrow account was created by the Company and a sum of Rs. 812 Lacs was deposited by the Company for the purpose of making payment to the G series debenture holders and the Consortium of Banks. Pursuant to the order dated 05.12.2003 sanctioning the scheme of Compromise with the G series debenture holders, Company have disposed of Rs.98.72 Lakhs. She has further submitted that this Court has passed further orders on 29.03.2004 and 09.04.2004 in Company Application No. 79 of 2004 permitting the Company to disburse the amount of Rs. 716.05 Lakhs amongst the members of the Consortium, being the amount lying in the aforesaid Escrow account opened by the Company for this purpose along with the interest earned on the same. Considering the aforesaid payment, the Company has already made the payment to the extent of approximately 61%. The Company shall make the payment of the balance amount within 60 days from the effective dates as proposed in the Scheme. The Company is, accordingly, directed to make the payment of the balance amount within 60 days from the effective date as proposed in the Scheme.

13. The petition is accordingly disposed of. So far as the cost to be paid to the Addl. Central Government Counsel is concerned, it is quantified at Rs. 3,500/-, and the same may be paid to Ms. P.J. Davawala, learned Addl. Central Government Counsel.

