
(2011) 02 DEL CK 0249
In the Delhi High Court
Case No : Writ Petition (C) 254 of 2011

IFCI Ltd.

APPELLANT

Vs

Bharat Steel Tubes Ltd.

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Citation : (2012) 4 BC 55

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Dushyant Dave, Purti Marwaha, Apoorve Karol and Chirag Kher, for the Appellant; Rajiv Bahl, for Official Liquidator, Rajiv Nayar, Arun Kathpalia and Amit Dhupar, for the Respondent

Judgement

Pradeep Nandrajog, J.—IFCI and Bharat Steel Tubes seem to be having a running feud and are sparring on issues which could aptly be called shadow boxing; and unfortunately the match referee is not compelling them to fight the main bout. Colossal judicial time has been wasted by the shadow boxing rounds and with this preamble to our decision, we intend to close by putting both of them in the fighting ring and direct the referee to ensure that the actual boxing round commences; enough of shadow boxing has been resorted to by the two.

2. Punjab National Bank had extended various credit facilities to Bharat Steel Tubes and as per IFCI Ltd. the debt stands assigned to it.

3. Before the debt was assigned, Punjab National Bank had initiated recovery proceedings before the Debt Recovery Tribunal at Delhi for recovery of the dues.

4. The claim filed in the year 2003 seeks recovery of `327.62 crores. On 14.8.2003, this Court confirmed the recommendations of BIFR to wind up Bharat Steel Tubes Ltd. It appears that somewhere in the month of September 2004 Punjab National Bank approved a One Time Settlement proposal for dues to be liquidated by paying `2616.33 lakhs by December 2007 and there was an issue of default for which Punjab National Bank claims to have revoked the settlement on

14.6.2007. On 15.7.2008 Punjab National Bank assigned the debt to ACE Ltd. which in turn, vide Deed of Assignment dated 17.4.2009, assigned the debt to IFCI and on 21.7.2009 IFCI filed a substitution application in the pending OA No. 12/2003 praying to the Debt Recovery Tribunal that in view of the registered deed of assignment in its favour, it be substituted as the claimant.

5. Unfortunately, the application dated 21.7.2009 has not been decided till date.

6. During arguments in the 2 writ petitions we had wondered as to why would an application predicated on a registered Deed of Assignment be kept pending for so long keeping in view the fact that the controversy whether IFCI is a public financial institution entitled to take recourse to the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act 1993 has been settled in favor of IFCI.

7. We were informed by learned senior counsel for the parties that the reason why the application seeking substitution by IFCI was being deferred, was the defense taken by Bharat Steel Tubes Ltd., in the reply filed, wherein it was pleaded that since it had discharged its obligations under the One Time Settlement, no assignable right existed in favor of Punjab National Bank and thus IFCI could not be conveyed anything under the deed of assignment.

8. These kinds of defenses are not unknown in law and the answer to such kind of defenses is simple. Somebody has to contest the defense taken and since PNB has assigned the debt and has received consideration, it is obvious that PNB would not be interested in the matter. It is the assignee of the debt who would have an interest to oppose the claim of the debtor that there is no debt which can be assigned. Thus, a simple judicial order required to be passed would be that the assignee should be substituted in place of the assignor with a caveat that the substitution would not be treated as an acceptance of the fact that there existed a debt which was assignable.

9. We hope that we are now clear to the reader of our judgment, when we wrote the preamble by lamenting that the referee i.e. the Debt Recovery Tribunal has permitted the 2 players to indulge in shadow boxing without compelling them to enter the ring and do the actual.

10. Since DRT-III was taking unduly long to decide the application filed by IFCI seeking substitution, it took recourse to a remedy before the Debt Recovery Appellate Tribunal raising a grievance that its application was not being decided by the Debt Recovery Tribunal resulting in the Debt Recovery Appellate Tribunal passing an order on 9.8.2010 directing the Debt Recovery Tribunal to dispose of IFCI's application seeking substitution within 45 days and in respect of which order, IFCI's grievance continues to subsist that even till today its application seeking substitution has not been decided and for which IFCI feels that the Presiding Officer of DRT-III is extending too long a rope to favor Bharat Steel Tubes Ltd.

11. Proceeding ahead with the narration of facts, which would evidence nothing but shadow boxing and waste of precious judicial time, relevant would it be to note that on 10.8.2009 IFCI chose to proceed u/s 13(2) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 and attached and took possession of the immovable properties of the company.

12. Rather than questioning the action by filing an appeal u/s 17 of the Act before the Debt Recovery Tribunal and for which we find that the limitation prescribed is 45 days, one Satinder Pal, claiming to be a Director of the company, filed a civil suit on the Original Side of this Court registered as CS(OS) No. 1886/2009 praying for a decree of injunction to restrain IFCI from proceeding under The Securitization Act and secured an ex-parte injunction against IFCI which lasted till 10.9.2010 and in the meanwhile a Division Bench of this Court held on 12.7.2010, in WP(C) No. 7097/2008, that IFCI is a Public Financial Institution

13. It is the case of IFCI that the injunction was vacated on 10.9.2010 when the suit filed by Satinder Pal Singh was dismissed at around 3:00 PM and ignoring the caveat lodged by IFCI, the company contrived to obtain an ex-parte injunction order in its favor, from DRT-III presided over by Sh.D.C. Thakur in the appeal filed by it against the notice dated 10.8.2009; by which ex-parte order, DRT-III fixed the next date of hearing as 15.9.2010.

14. The grievance of IFCI is that as per Rule 19 and 20 of the DRT (Procedure) Rules 1993, the working hours of the Tribunal are statutorily fixed from 10:00 AM to 6:00 PM with further caveat that no work, unless of an urgent nature shall be admitted after 4:30 PM. Thus, IFCI makes 2 grievances on the score. Firstly that the company contrived to overcome the caveat, lodging whereof was ignored by the Presiding Officer of DRT-III; and secondly the Presiding Officer took cognizance of an application and passed the ex-parte order somewhere between 7:00 PM and 8:00 PM i.e. extended a courtesy unknown in judicial proceedings. Suffice would it be to state that hidden between the challenges is the message conveyed to the Superior Court that Sh.D.C. Thakur the Presiding Officer of DRT-III has been over benevolent to the company.

15. The grievance of IFCI continues further when its cry of being outmaneuvered before DRT-III on 15.9.2010 resulted in an order dated 15.9.2010 being passed, requiring the company to deposit within 30 days of 15.9.2010 a sum of ` 35 crores with IFCI without prejudice to the controversy before the Tribunal. Under the same order the Tribunal directed IFCI to file an affidavit on the issue whether IFCI had been permitted by its creating statute to be the assignee of the securitization company and for which the grievance of IFCI is that the said direction is an indication of the mindset of a judicial officer to somehow or the other prolong the matter pertaining to the application filed by IFCI seeking substitution and for which grievance the substratum of the argument is that affidavits are required to be filed on factual issues and not on a matter of law. Learned senior counsel for IFCI was at pains to highlight that the subject matter

on which the affidavit was directed to be filed was a legal issue to be decided on a plain reading of a statute.

16. Now as per the order dated 9.8.2010 passed by the Debt Recovery Appellate Tribunal, DRT-III was directed to decide IFCI's application seeking substitution within 45 days and the same would be over by 24.9.2010; but before that date IFCI filed 2 miscellaneous appeals registered as Misc. Appeal Nos. 352/2010 and 353/2010 challenging the ex-parte order dated 10.9.2010 issued by DRT-III restraining IFCI from proceeding ahead with the action initiated by it under The Securitization Act as also the order dated 15.9.2010 extending the ex-parte stay but on term of `35 crores being deposited within 30 days. Various issues were raised in the appeals. The 2 appeals were taken up by Debt Recovery Appellate Tribunal on 22.9.2010 and as per an order of even date, the Debt Recovery Appellate Tribunal issued notice in the appeals returnable for 27.9.2010 and in the meanwhile sought a report from the Registrar whether DRT-III had complied with its order dated 9.8.2010. On 27.9.2010 it simply adjourned the 2 appeals.

17. A power exists in the Chairperson of the Debt Recovery Appellate Tribunal u/s 17(A) of superintendence and control over the Tribunals which includes the power to transfer proceedings from one tribunal to the other and for which IFCI filed an application before the Chairman of the Tribunal in August 2010 praying that the pending proceedings before DRT-III be transferred to another Bench of the Tribunal. This was followed by another application filed u/s 17(A) praying for the same relief and it appears that the patience of IFCI was being exhausted.

18. IFCI was having a problem for the reason after the ex-parte injunction obtained by Satinder Pal in CS (OS) No. 1886/2009 pertaining to its notice dated 10.8.2009 was vacated by a learned Single Judge on the Original Side of this Court, it had proceeded ahead by issuing a public notice dated 13.9.2010 for sale of the properties of the company, possession whereof was taken over by IFCI under its notice dated 10.8.2009 and this action IFCI claims was taken by it because the ex-parte injunction was vacated by a learned Single Judge of this Court and the order restraining it issued by DRT-III on 10.9.2010 was not served upon it till said date, which order IFCI claims was served upon it only on 14.9.2010. The continuation of the injunction dated 10.9.2010 was creating a problem for IFCI and hence it filed a writ petition in this Court being WP(C) No. 6652/2010 challenging the order dated 10.9.2010 and 15.9.2010 passed by the DRT-III as also the order dated 27.9.2010 passed by the Appellate Tribunal in continuance of its order dated 22.9.2010 and granting time to the company to file a reply to the 2 miscellaneous appeals.

19. Vide order dated 22.9.2010, while issuing notice to the company, a Division Bench of this Court permitted IFCI to proceed ahead in pursuance to the public notice dated 13.9.2010 but restrained IFCI from finalizing the bids.

20. Bharat Steel Tubes Ltd. took the matter further before the Supreme Court challenging the order dated 22.9.2010 passed by the Division Bench of this Court

and the Petition for Special Leave to Appeal filed by it came to be decided vide judgment and order dated 30.11.2010, by which date writ petition filed in this Court came to be disposed of. In Para 29 of the decision the Supreme Court directed that the issue whether IFCI could be enjoined to enforce its rights under The Securitization Act would be decided by the Debt Recovery Appellate Tribunal in the 2 Miscellaneous Appeals being No. 352/2010 and 353/2010 pending before it. It may be noted that the Supreme Court held that IFCI is admittedly a Public Financial Institution and is an assignee of the debt assigned by PNB to ACE Ltd., which in turn had assigned the same to IFCI.

21. What has the Debt Recovery Appellate Tribunal done thereafter?

22. It has dismissed the 2 applications filed by IFCI for transfer of the proceedings before DRT-III by and under an order dated 6.1.2011 which reads as under:

1. Counsel for the Appellant present. Chamber appeal heard. The appeal stands restored.
2. Counsel for the parties present in both the cases. Arguments on transfer application heard. There appears to be no ground to transfer the case but in case, if the Appellant is aggrieved by any order it can file the appeal at any time.
3. Both the cases stand disposed of.
4. Copies of this order are furnished to the parties as per law and one copy be sent to the Ld. DRT forthwith.

23. By and under WP(C) No. 254/2011 said order dated 6.1.2011 has been challenged urging that good grounds were advanced before the Debt Recovery Appellate Tribunal to show that IFCI had a reasonable apprehension of the Presiding Officer of DRT-III being biased and hence the proceedings before DRT-III ought to be transferred to another Bench and during arguments apart from highlighting that the Appellate Tribunal has given no reasons to dismiss the applications seeking transfer, which itself was stated to be a serious infirmity, it was highlighted that the manner in which the ex-parte order dated 10.9.2010 was obtained; the fact that on 15.9.2010 DRT-III put a condition of `35 crores to be deposited within 30 days but by not providing the consequence of non-compliance with the said term had surreptitiously permitted the ex-parte injunction to continue ignoring that `35 crores was never deposited (it be noted that the said amount has not been deposited till date) and lastly the fact that the Appellate Tribunal's order dated 9.8.2010 requiring IFCI's application seeking substitution to be decided within 45 days was still not decided, was a good ground to hold that the apprehension of IFCI of not getting justice from the Presiding Officer of DRT-III was a reasonable apprehension requiring the proceedings to be transferred from DRT-III to any other Tribunal.

24. The Appellate Tribunal passed another order dated 22.12.2010 and this order is stated to be in the teeth of the directions issued by the Supreme Court on

30.11.2010. Ignoring the direction of the Supreme Court to the Appellate Tribunal to decide Appeal No. 352/2010 and Appeal No. 353/2010, the Appellate Tribunal ducked the issue by directing, vide order dated 22.12.2010, that the 2 appeals stood disposed of with a direction to the Tribunal to decide IFCI's application seeking substitution on the basis of day-to-day hearing as also to clarify the consequence of the company not depositing ` 35 crores within 30 days of 15.9.2010.

25. This order has been challenged by IFCI in WP (C) No. 415/2011.

26. We think we are not wrong when we commenced our journey by opining that the parties have indulged in shadow boxing and the referees, i.e. DRT-III and the Debt Recovery Appellate Tribunal have permitted them to indulge in shadow boxing and unfortunately at public expense.

27. It hardly needs to be emphasized that Courts and Tribunals are custodians of public time and keeping in view docket explosion chocking Courts and Tribunals, it is the duty to be extremely stingy on time; ensuring that every second of the Court or Tribunal sitting time is properly accounted for and properly utilized.

28. It needs hardly any emphasis that directions issued by a Superior Court have to be obeyed by a Subordinate Court or a Tribunal as held by the Supreme Court in the decision reported as Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another,

29. Since the direction issued by the Supreme Court required the Debt Recovery Appellate Tribunal to decide the 2 appeals being Appeal Nos. 352/2010 and 353/2010 on merits we see no escape from the conclusion that the Tribunal has to decide the 2 appeals on merits and resort to a shortcut which has been resorted to by the Tribunal vide the impugned judgment and order dated 22.12.2010 is illegal.

30. We may highlight the fact that whatever be the reasons for DRT-III, may be accommodation of counsel for the parties, it was the duty of DRT-III to have complied with the directions issued by the Appellate Tribunal vide order dated 9.8.2010 to decide IFCI's application seeking substitution within 45 days and it was the duty of the Appellate Tribunal to have ensured compliance with its order dated 9.8.2010, in respect whereof the Debt Recovery Appellate Tribunal had required its Registrar to furnish a report, as per the order dated 22.10.2010 passed by Debt Recovery Appellate Tribunal.

31. It was surely the duty of DRT-III to decide with reasonable dispatch the objection of IFCI to the ex-parte injunction granted on 10.9.2010 as also and it was the duty of the Tribunal to decide the consequences of not complying with the condition imposed vide order dated 15.9.2010; requiring the company to deposit ` 35 crores within 30 days.

32. The manner in which DRT-III and the Appellate Tribunal have conducted the proceedings is bound to leave an impression in one's mind, if not graver, at least

that neither DRT-III nor the Appellate Tribunal are discharging their functions with the concern and commitment expected from High Powered Tribunals. One is left with a bitter feeling that for reasons unknown the matter is being allowed to unnecessary linger on.

33. As we had noted herein above, the issue of IFCI being a Public Financial Institution stands covered in its favor. That it could be the assignee of a claim from a Public Limited Bank is a matter of law and the Assignment Deed on which it relies is a registered document, execution whereof is not in dispute. The opposition of the company that there was no assignable debt requires a simple order to be passed allowing IFCI's application to be substituted as the claimant with a clarification that the said substitution would be without prejudice to the defense taken. The reason is obvious. There has to be a party before the Tribunal to oppose the defense taken by the company.

34. Noting that DRT-III and the Appellate Tribunal are simply playing merry-go-round and finding sustenance from the observations of the Supreme Court in the decision dated 30.11.2010, in exercise of our power under Article 226 of the Constitution of India which permits us to pass orders which Courts and Tribunals subordinate to us would be obliged to pass, but are not passing, we allow the application filed by IFCI seeking substitution as the Claimant in OA No. 12/2003 filed by PNB against Bharat Steel Tubes Ltd. and Ors. with a clarification that this would be without prejudice to the defense of Bharat Steel Tubes Ltd. and other Respondents of the Original Application that qua the facilities availed by the company under Punjab National Bank there was no assignable debt.

35. This takes care of one simple issue which has lingered on ad-nauseam.

36. In harmony with the direction issued by the Supreme Court vide judgment and order dated 30.11.2010 we set aside the order dated 22.12.2010 and restore Misc. Appeal No. 352/2010 and Misc. Appeal No. 353/2010 with a direction to the Debt Recovery Appellate Tribunal to decide the two Appeals on merits after hearing learned Counsel for the parties on day-to-day hearing basis and pronounce decision as expeditiously as possible and preferably within 30 days of receipt of the present order.

37. We are informed that Sh .D.C. Thakur, the Presiding Officer of DRT-III is scheduled to demit office on the 24th of this month and thus we drop the issue pertaining to the proceedings to be transferred from his Bench to another Bench and our reason for dropping the issue is plain obvious. Within the next 9 days the issue on which proceedings were sought to be got transferred would dissolve, but would surely expect Sh. D.C. Thakur to pass no orders lest issues get precipitated within the next 9 days and hence we eschew any reference to the arguments whether or not IFCI has a reasonable apprehension of bias against the officer concerned and also eschew reference to observations made by a Division Bench of this Court adversely commenting on the manner in which Sh. D.C. Thakur had been holding Court.

38. The two writ petitions stand disposed of in terms of paras 33 and 35 above.

39. No costs.