(1998) 10 PAT CK 0008

In the Patna High Court

Case No : C.P. No. 3 of 1984

In Re: Rohtas Industries Ltd. (In Liquidation)

Date of Decision : 30-10-1998

Acts Referred:

Companies Act, 1956 — Section 446, 446(1), 446(2)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 34

Citation : (1998) 10 PAT CK 0008

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Shailesh Kumar Sinha and Kishore Kumar Sinha, Shreenath Singh and Subhro Sanyal, Umesh Prasad Singh, for the Appellant;

Final Decision : Dismissed

Judgement

S.N. Jha, J.—Sahu Jain Limited has filed an application for recall of the order dated August 22,1997, granting leave to the State Bank of India and the United Bank of India, being secured creditors, to prosecute Suit No. 993 of 1984/T. A. No. 256 of 1996 and Suit No. 627 of 1985/T. A. No. 45 of 1996, respectively, before the Debts Recovery Tribunal, Calcutta, in terms of Sections 446 of the Companies Act, 1956.

2. The aforementioned suits were instituted, as would appear from their numbers, in the years 1984 and 1985 for recovery of outstanding dues from Rohtas Industries Ltd. The applicant herein, i.e., Sahu Jain Limited was impleaded as a co-defendant as guarantor. During the pendency of the suits (in the Calcutta High Court before their eventual transfer to the Debt Recovery Tribunal), on May 22, 1986, a provisional liquidator with respect to Rohtas Industries Limited (hereinafter referred to as "the company") was appointed by this court in the present proceedings. In the meantime, the workmen of the company filed a writ petition in the Supreme Court being Writ Petition (Civil) No. 5222 of 1985-Workmen of Rohtas Industries v. Rohtas Industries [1996] 86 Comp Cas 1. The writ petition was entertained with the avowed object of reviving the company and rehabilitating the workmen. The winding up proceedings were

accordingly stayed. After a long drawn exercise the writ petition was finally disposed of on October 18, 1995. While directing resumption of the winding up proceedings, the Supreme Court issued a number of directions. One of the directions was that the company court may consider whether the undertakings of the company can be revived. In other words, a dual responsibility was cast upon this court for winding up of the company as well as its revival.

3. On receipt of the judgment and order of the Supreme Court on November 24, 1995, this court passed an order of winding up of the company. The official liquidator was appointed as the liquidator of the company. Thereafter, in the light of the directions of this court, endeavours were made for revival of the company. A number of orders were passed from time to time in this regard. Finally, this court concluded that the attempt to revive the company/undertakings were a futile exercise. Accordingly, by order dated May 23, 1997, it closed the matter. It is not necessary to set out further facts in this regard for the disposal of the present application.

4. In the meantime, the State Bank of India and the United Bank of India had filed separate applications seeking leave to prosecute the aforementioned suits which had by then been transferred to the Debt Recovery Tribunal, Calcutta, in terms of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the Debts Recovery Act"). By order under reference on August 22, 1997, the applications were allowed. This court noted that the two banks are the secured creditors of the company and, as such, they are entitled to stay out of the winding up proceedings. The leave, however, was granted on the condition that the official liquidator will be allowed to represent the companies in the suits and that the assets of the company will not be sold without permission of this court in the event the suits are decreed in favour of the banks.

5. The recall of the said order is sought by the present application on the ground that in terms of the directions of the Supreme Court contained in its judgment and order dated October 18, 1995--Workmen of Rohtas Industries v. Rohtas Industries [1996] 86 Comp Cas 1, the claims of the financial institutions and creditors have to be considered by this court and not by any other court. Secondly, it is submitted, the order dated August 22, 1997, was passed without issuing notice to the applicant as required under Rule 117 of the Companies (Court) Rules, 1959, and the order is, therefore, fit to be recalled. Mr. Shreenath Singh, learned counsel for the applicant, elaborating his submissions on the first point, contended that the direction of the Supreme Court is in the nature of an order contemplated under Article 142 of the Constitution and binding on this court. He relied on Md. Anis v. Union of India [1994] Suppl 1 SCC 145. Mr. Singh further contended that the winding up proceedings are in the nature of insolvency proceedings wherein the claims of the creditors are required to be adjudicated upon. In this regard he placed reliance on the observations contained in paragraph 31 of the judgment in Harshad Shantilal Mehta v.

Custodian [1998] 92 Comp Cas 936 (SC).

6. Mr. Shailesh Kumar Sinha, learned counsel for the State Bank of India, submitted that the application for recall at the instance of a guarantor is not maintainable. He pointed out that the order u/s 446 of the Companies Act is directed against the company and hence it is the company, now represented by the official liquidator, who alone can file such an application. He submitted that on this very logic it was not necessary to issue notice of the application u/s 446 of the Act to the applicant in terms of Rule 117 of the Companies (Court) Rules. Mr. Sinha contended that the direction of the Supreme Court to consider the claims of the financial institutions and creditors has to be construed in the context of the revival proceedings. After this court abandoned its efforts to revive the company, it had to proceed in the matter in accordance with the provisions of the Companies Act. Mr. Sinha submitted that in any view of the matter, in view of the provisions of the Debts Recovery Act the question is of academic importance only inasmuch as in view of the provisions of the Debts Recovery Act conferring exclusive jurisdiction upon the Debt Recovery Tribunal established under the said Act, no other court including the company court (except the Supreme Court and the High Courts exercising jurisdiction under Articles 226/227 of the Constitution) has jurisdiction to adjudicate upon the claims of the banks and financial instituitons. Mr. Sinha placed reliance on a decision of this court in Bihar Solex Pvt. Ltd., In re [1999] 96 Comp Cas 40 (Company Petition No. 2 of 1992).

7. Mr. Umesh Prasad Singh, learned counsel for the official liquidator, submitted that the suits in question were pending from before except for the period of moratorium by virtue of the order of the Supreme Court. The banks were, therefore, required to seek leave to prosecute them after the winding up order was passed by this court, in terms of Section 446 of the Companies Act. However, after the coming into force of the Debts Recovery Act and the establishment of the Debt Recovery Tribunal under that Act, no such leave is required. He too placed ''reliance on the decision of this court in Bihar Solex Pvt Ltd., In re [1999] 96 Comp Gas 40. He also submitted, endorsing the line of arguments of Mr. Shailesh Kumar Sinha, that after this court abandoned the attempt to revive the company, the pending claims of the financial institutions and the creditors were not required to be considered by this court, Mr. Singh pointed out that as secured creditors the banks are required to stand outside the winding up proceedings. Their rights are neither abridged nor affected by the reports of the Claims Committee. In any view, the order dated August 22 1997, under reference, it not likely to cause any prejudice to the applicant. Therefore, it is of no consequence if no notice as required under Rule 117 of the Companies (Court) Rules was issued to it.

8. The sheet anchor of the argument of Mr. Shreenath Singh, learned counsel for the applicant, is the judgment and order of the Supreme Court dated October 18, 1995, which has since been reported in Workmen of Rohtas Industries v. Rohtas Industries [1996] 86 Comp Cas 1. It is true that while disposing of the writ

petition and remitting the matter back to this court the Supreme Court, inter alia, directed this court to consider the report of the Claims Committee (on the claims of the financial institutions, creditors and the workers). It is, however, to be kept in mind, as indicated above, that a dual responsibility was cast upon this court inasmuch as this court was not only permitted to resume the winding up proceeding but also directed to consider whether the industrial undertakings of the company can be revived in the light of the offers that had been received from Sri L.N. Dalmia, Speedcrafts Pvt. Ltd. and Rohtas Industries Workers'' Co-operative Society Ltd. along with any other offers that may be received. The Claims Committee was ordered to be constituted by the Supreme Court in the context of the revival proceeding. While continuing the effort to revive the company, naturally, this court was required to consider the report of the Claims Committee. However, after this court abandoned its efforts in this regard, it had to proceed in accordance with the provisions of the Companies Act. But as rightly contended both on behalf of the State Bank of India and the official liquidator, the question as to whether this court was/is required to consider the report of the Claims Committee has lost its significance after establishment of the Debt Recovery Tribunal under the provisions of the Debts Recovery Act. Section 17 of the said Act confers an all exclusive jurisdiction upon the Debt Recovery Tribunal established by that Act to entertain and decide applications by banks and financial institutions for recovery of debts due to them. Section 18 excludes the jurisdiction of any other court except the Supreme Court and the High Courts (while exercising jurisdiction under Article 226/227 of the Constitution). It lays down that on and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters specified in section 17. Section 34 gives overriding effect to the provisions of the Act and Section 31 provides for transfer of pending cases to the Debt Recovery Tribunal.

9. In the case of Bihar Solex Pvt. Ltd., In re [1999] 96 Comp Cas 40 (Patna), this court concluded that after the coming into force of the Debts Recovery Act and establishment of the Debt Recovery Tribunal, in view of the clear provisions of Sections 17 18 and 34, neither is it necessary to apply for leave in terms of Section 446(1) of the Companies Act nor is it open to the company court to transfer the suit to itself for trial in the winding up proceedings in terms of Section 446(2) of that Act. This court noticed, among others, a decision of the Supreme Court in Industrial Credit and Investment Corporation of India Ltd, v. Srinivas Agencies [1996] 86 Comp Cas 255 and a decision of the Kerala High Court in Industrial Credit and Investment Corporation of India Ltd. v. Vanjinad Leathers Ltd. [1998] 91 Comp Cas 625 (Ker).

10. If in view of the provisions of the Debts Recovery Act it was not necessary to apply for leave as held by this court in the case of Bihar Solex Pvt. Ltd., In re [1999] 96 Comp Cas 40, there is no question of recall of the order dated August 22, 1997, by which such leave was granted. I must mention that the applications filed by the banks were disposed of without considering the provisions of the

Debts Recovery Act. If the relevant provisions of that Act had been brought to the notice of this court, the order in a different form, perhaps, would have been passed. While disposing of the writ petition of the workman of Rohtas Industries Ltd., the Supreme Court did not take into consideration the relevant provisions of the Debts Recovery Act. Perhaps, it appears to me, that the Debt Recovery Tribunal had not been established by that time and, therefore, there was no occasion for the court to consider the same. In any view, the order of the Supreme Court directing this court to consider the report of the Claims Committee, in my respectful opinion, does not override the express mandatory provisions of the Debts Recovery Act. In this view of the matter, there is hardly any scope or justification for recalling the order dated August 22, 1997.

11. The application filed by Sahu Jain Limited (I. A. No. 5077 of 1998) stands rejected accordingly.