

(2006) 07 RAJ CK 0014
In the Rajasthan High Court
In Re: TCI Infrastructure Finance Ltd.

Date of Decision : 07-07-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 391
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2007) 2 BC 359 : (2007) 2 RLW 1596

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The present applicant company has taken out this Judge's summons under Rule 71 of the Companies (Court) Rules, 1959 praying for an order under Sub-section (6) of Section 391 of the Companies Act for stay of continuation of proceedings pending in Debt Recovery Tribunal and various courts of Metropolitan Magistrate New Delhi.

2. Mr. K.D. Garg, the Executive Director of the applicant company in the additional affidavit stated that HUDCO a secured creditor of the applicant company has initiated following proceedings against the applicant company:

(a) Original application No. 64/2004 pending before Debt Recovery Tribunal (1) Delhi, titled as HUDCO v. TCI Finance Infrastructures Ltd. and Ors.

(b) Complaint u/s 138 of Negotiable Instruments Act pending before Ms. Geetanjali Goyar, Metropolitan Magistrate, Patiala House Court New Delhi (CC No. 1028/03, R. No. 30).

(c) Complaint u/s 138 of Negotiable Instruments Act pending before Sh. Sh. Gauttam Manan, Metropolitan Magistrate, Patiala House Court New Delhi (CC No. 1917/1, R. No. 5)

(d) Complaint u/s 138 of Negotiable Instruments Act pending before Sh. Pritam Singh, Metropolitan Magistrate, Patiala House Court New Delhi (CC No. 1925/1/04, R. No. 14).

3. It is canvassed that the applicant company has already filed application u/s 391(1) of the Companies Act, 1956 seeking direction for convening the meeting of the secured creditors for considering and approving the proposed scheme of compromise/arrangement with or without modification. This court vide order dated May 26, 2006 appointed Sh. Sudhir Kumar Tewari as Chairman of the meeting of the secured creditors to be held on July 5, 2006.

4. Now the Chairman of the Meeting Shri Sudhir Kumar Tewari has submitted the report to the effect that on July 5, 2006, the date on which the meeting was to be held, he received a call from Mr. Satish Chandra, Dy. General Manager, Stressed Assets Stabilisation Fund (IDBI) that due to cancellation of flight from Delhi to Jaipur he would not be able to reach by 10.00 AM, the time scheduled for the meeting. He requested that since he was reaching Jaipur by road, therefore the meeting may be adjourned till 1.00 PM. Since there were only three secured creditors of the applicant company, therefore, upon receipt of the information of Dy. General Manager, the Chairman thought it proper to inform the representatives of other two creditors namely HUDCO and Bhoruka Investment Ltd. about the request of Stressed Assets Stabilisation Fund (IDBI) for deferment of the meeting till 1.00 PM. The representatives of the other two creditors also agreed for the same and accordingly the meeting was postponed till 1.00 PM. Thereafter the representative of HUDCO Mr. R.L. Batta met the Chairman at 11.30 AM in the High Court premises and handed over a written communication for rescheduling the date of meeting. The representatives of other creditors namely Stressed Assets Stabilisation Fund (IDBI) and Bhoruka Investment Ltd. agreed by written consent for rescheduling the meeting to be held on July 17, 2006 at 12.30 PM.

5. The grievance expressed by the applicant company is that for quite some time the company was in financial difficulties and therefore it could not repay its debts. Because of non payment of the liabilities in time, one of the creditors of the company namely HUDCO has initiated legal proceedings by filing recovery applications before the competent courts. The applicant company is hopeful that the proposed scheme of compromise/arrangement shall be approved by the requisite number of secured creditors and the same shall be sanctioned by the Court. If the compromise arrived at between the company and secured creditors and sanctioned by the court the applicant company shall be able to received its operation. However if the creditors are allowed to initiate recovery proceedings against the applicant company the entire endeavour to receive the company and to implement the scheme of compromise will become meaningless.

6. My attention was drawn to Sub-section 6 of Section 391 of the Companies Act, which provides that this court may in the interest of justice stay the commencement or continuation of any suit or proceeding against the company till the application is finally disposed of.

7. Gujarat High Court in Harish C. Raskapoor and Others Vs. Jaferbhai Mohmedbhai Chhatpar, Divya Vasundhara Financiers P. Ltd.,)indicated that

Section 391(6) of the Companies Act empowers the court where an application has been made to it for sanction of a scheme of arrangement or compromise u/s 391, to stay proceedings against the company pending final disposal of the application. The word "proceeding" in Section 391(6) is a term of wide import and includes within its sweep criminal proceeding also.

8. Having carefully considered the material on record. I am of the view that there is prima facie case in favour of the applicant company. I, therefore stay the continuation of the cases pending in Debt Recovery Tribunal (I) Delhi and courts of Metropolitan Magistrates New Delhi, the details of which has been mentioned in para No. 2 of this order, till disposal of the application filed by applicant company u/s 391 of the Companies Act.

9. Issue notice to HUDCO, who shall be at liberty to move application seeking modification/vacation of the stay order.

10. The application stands allowed as indicated above.