(2004) 08 UK CK 0055

In the Uttarakhand High Court

Case No : Civil Miscellaneous Application No. 3420 of 2004

In Re: U.P. Carbide and Chemicals Ltd.

Date of Decision : 20-08-2004

Acts Referred:

Companies Act, 1956 — Section 19(19), 442, 446, 446(1), 529A
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 25, 31A, 34

Citation : (2005) 63 SCL 419 : (2004) 2 UD 618

Hon'ble Judges : P.C. Pant, J

Bench : Single Bench

Advocate : M.P. Saraf, A.K. Joshi, S.K. Jain and Sharad Sharma, for the Appellant;

Judgement

P.C. Pant, J.—These objections have been filed on behalf of Indian Overseas Bank in Miscellaneous Company Application No. 8/2001 against the report No. 308/2004, dated 2-12-2003 of the Official Liquidator for distribution of claim to the Ex-workers and Financial Institutions u/s 529A of the Companies Act, 1956.

2. Brief facts of the case are that the Board of Industries and Financial Reconstruction (BIFR) recommended winding up of the company M/s. U.P. Chemical and Carbide Ltd. (hereinafter referred to ''UPCCL'') before the High Court of Judicature at Allahabad in the year 1994. The said High Court vide its order dated 19-7-1994 directed the winding up of UPCCL as no one opposed it nor company filed any appeal against the reference order of BIFR. Consequently, Official Liquidator under directions of the Court started taking steps for winding up of the company. After exchange of affidavits and counter-affidavit in the year 1996 the Official Liquidator sought permission to sell the assets of the company by auction. Meanwhile, the workers through their union filed application u/s 529A of the Companies Act for direction for payment of their dues. One of the secured creditors made an offer to purchase the assets of the company for Rs. 5.76 crores, but the first sale was made in favour of the highest bidder Sri V.K. Jain. From the record, it appears that the said sale was set aside and in 1996 IDBI also moved an application u/s 446(1) of the Companies Act for permission to

continue with the suit. They have filed the suit for recovery of loan against the company before the Bombay Court. The record shows that in the year 1997 the Official Liquidator was directed to hand over the assets to PICUP and the said agency was directed to advertise and sell the assets of the company under liquidation. The record shows that this time, i.e., in the second sale one Sri I.P. Tantia made the highest bid in the sale. However, it appears that the said sale was also set aside. Lastly, the Court accepted the highest bid of Bharat Associates for Rs. 7 crores which amount was deposited with the Official Liquidator. Thereafter, the Official Liquidator filed report dated 2-12-2003 (numbered as 308/2003) for disbursement of claim to ex-workers and financial institutions as per the provisions of Section 529A of the Companies Act, 1956. The said report shows that the Official Liquidator has in all Rs. 7,00,50,000.00 with him for distribution while the Industrial Financial Corporation of India (IFCI) has a claim of Rs. 11,91,89,260.00, Indian Overseas Bank (present objector) has a claim of Rs. 1,65,12,174.00 and 379 Ex-Workers'' claim was to the tune of Rs. 1,89,16,530.00 total amounting to Rs. 15,46,17,964.00. The Official Liquidator made the following submissions in his report for disbursement of the amount.

(I) The Official Liquidator may be permitted to declare dividend at the rate of 45.3 paise per rupee to the secured creditor and ex-workers.

(II) The Official Liquidator may be permitted to dispense with the settlement of claims of unsecured creditors in the absence of insufficient funds.

(III) The Official Liquidator may be permitted to dispense with the settlement of the list of contributories in absence of insufficient funds.

(IV) The Official Liquidator may also kindly be permitted for issue notices to the secured creditors and ex-workers given them one month and 15 days time to receive their payment.

(V) The Official Liquidator may also kindly be permitted to encash the F.D.Rs. for distribution and also to open a New Dividend Account with Punjab National Bank, Civil Lines, Allahabad.

(VI) Pass such order or orders as may deem fit and proper in the circumstances of the case.

3. Against this report of the Official Liquidator the Indian Overseas Bank has filed the present objections.

4. The Indian Overseas Bank in its objections has stated that the objector Bank has earlier filed a suit before the Civil Court, Dehradun for recovery of Rs. 2,87,72,403.33 with pendentelite and future interest against UPCCL and its guarantor SMDC. Since the said suit was filed in the year 1995 without the permission of the company court, the bank moved application before the Allahabad High Court, wherefrom permission was granted on 27-11-1995 with condition that the Bank would deposit Rs. 8000.00 with Official Liquidator for expenses. The said suit was registered as Civil Suit No. 33 of 1996 and was

decreed ex parte for the aforesaid amount with interest 24.75% per annum with quarterly rests. In furtherance to the recovery of the amount of the Indian Overseas Bank filed execution before the Civil Court, Dehradun in the year 1998, but by then, Debt Recovery Tribunal (DRT) was established at Jabalpur and thereafter at Allahabad (U.P.) as such the execution case No. 59/2000 was transferred to Allahabad. The Official Liquidator filed objections in the said proceedings. The DRT after considering the submissions of the parties before it, issued recovery certificates u/s 31A of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDBFI Act). The said recovery certificate was sent to DRT, Lucknow and notices were sent to the Official Liquidator in the matter. As such the Official Liquidator had full knowledge of the recovery proceedings before the DRT. The Indian Overseas Bank in the objections has raised the plea that once DRT got seized with the matter, the Official Liquidator loses its jurisdiction in the liquidation. It is further alleged in the objections that the Official Liquidator concealing the facts has submitted his report in question in this Court to which the objector Indian Overseas Bank prays that the same be rejected.

5. Heard the learned Counsel for the parties and perused the affidavits on record.

6. Sri M.P. Saraf, learned Counsel for the Indian Overseas Bank (objector) has vehemently argued that since the DRT was seized with the matter regarding recovery of loan, the Official Liquidator has lost his jurisdiction. He relied on Section 34 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 which reads as under :--

"(1) Act to have overriding effect.--Save as provided under Sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporation Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

7. To support his argument, the learned Counsel for the objector has relied upon the case law contained in Allahabad Bank Vs. Canara Bank and Another, . In para No. 50 of the said case the Apex Court has held as under :

"For the aforesaid reasons, we hold that at the stage of adjudication u/s 17 and execution of the certificate u/s 25 etc. the provisions of the RDB Act, 1993 confer exclusive jurisdiction on the Tribunal and the Recovery Officer in respect of debts payable to banks and financial institutions and there can be no interference by the Company Court u/s 442 read with Section 537 or u/s 446 of the Companies

Act, 1956. In respect of the monies realized under the RDB Act, the question of priorities among the banks and financial institutions and other creditors can be decided only by the Tribunal under the RDB Act and in accordance with Section 19(19) read with Section 529A of the Companies Act and in no other mariner. The provisions of the RDB Act, 1993 are to the above extent inconsistent with the provisions of the Companies Act, 1956 and the latter Act has to yield to the provisions of the former. This position holds good during the pendency of the winding up petition against the debtor company and also after a winding up order is passed. No leave of the Company Court is necessary for initiating or continuing the proceedings under the RDB Act, 1993. Points 2 and 3 are decided accordingly in favour of the appellant and against the respondents." (p. 431)

8. The careful reading of above paragraph makes it clear that the aforesaid observations are in respect of money realized by the DRT in the execution proceedings to which extent the Official Liquidator has no say. Para 50 of Allahabad Bank''s case (supra) needs to be read with paragraphs 60 and 61 of the same judgment. Like in Section 34 of RDBFI Act, 1993, words ''notwithstanding anything'' have been used also in Section 529A of the Companies Act, 1956. As such both the central enactments contained said expression i.e., ''notwithstanding anything''. The harmonious construction of both the provisions is required to be made at this juncture. As such in my opinion the only reasonable interpretation of the two sections appear to be that if DRT has realized the amount then it is to be distributed as directed by the Recovery Officer under his powers conferred by RBDFI Act read with Income Tax Act Schedule II; and on the other hand if the sale proceeds are in the hand of the Official Liquidator then the distribution should be made in the light of Section 529A of the Companies Act under the directions of the Company Court.

9. In view of the above discussion this Court feels that the present objections filed on behalf of Indian Overseas Bank are liable to be rejected. Accordingly, the objections are rejected. The interim order dated 6-7-2004 whereby the disbursement of the amount has been stayed is vacated. The report of the Official Liquidator bearing No. 308/2003, dated 2-12-2003 is accepted. The Official Liquidator is allowed to comply with the directions issued by this Court on 3-6-2004 within next two months.

10. Put up after two months when the compliance report is received from the Official Liquidator.

