(2012) 08 DEL CK 0013

In the Delhi High Court

Case No : Company Appeal No. 39, 40, 68 and 73 of 2011

Jhalani Tools (India) Ltd. APPELLANT

Vs

Tata Iron and Steel Company Ltd. and Others RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Citation : (2012) 7 AD 116

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Dhruv Mehta with Mr. Aman Vachher, Mr. Ashutosh Dubey, Mr. Sameer Abhyankar, Mr. Love K. Sharma and Ms. Vriti Anand, for the Appellant; Rajiv Bahl, for Official Liquidator. Mr. R.C. Chawla, for RPFC. Mr. Jos Chiramel and Ms. Abhinandanna Kain for R-3, 4, 6 and 8, Mr. Sangram Patnaik and Mr. Umesh Yadav for IDBI. Mr. Anil Nauriya, for R-15. Ms. Priyadarshini Verma, for IFCI., for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—Company Appeal No. 39/2011 has been preferred impugning the order dated 24.05.2011 of the learned Company Judge holding the revival and rehabilitation scheme filed by the Ex-Management of Jhalani Tools (India) Ltd., in Liquidation to be untenable and unworkable and accordingly dismissing the Company Application No. 2352/2010 seeking sanction of the revised scheme of arrangement filed on behalf of the Ex-Management. Notice of this appeal was issued. Company Appeal No. 40/2011 was preferred impugning the order dated 25.05.2011 of the learned Company Judge directing sale of the only remaining asset of the Company in Liquidation viz. the Unit at Faridabad. Notice of the said appeal was also issued and vide interim order dated 20.07.2011, the sale of the Unit of the Company in Liquidation at Faridabad was stayed.

2. Company Appeal No. 68/2011 has been preferred impugning the order dated 27.09.2011 of the learned Company Judge dismissing the applications of the Ex-Management of the Company in Liquidation for stay of prosecution by the

Provident Fund Authorities. Notice of this appeal was also issued and vide interim order dated 14.11.2011, the prosecution initiated was stayed.

3. Company Appeal No. 73/2012 has come up for consideration for the first time today and impugns the order dated 31.07.2012 of the learned Company Judge directing distribution of the sale proceeds of the other five Units of the Company in Liquidation between the Provident Fund Authorities, workers and the secured creditors.

4. The senior counsel for the appellant i.e. the Ex-Management of the Company in Liquidation could not controvert, that the fund position of the Company in Liquidation from the sale proceeds of the five Units as on 18.07.2012 is Rs. 71,99,93,780/-; that Justice (Retd.) S.N. Dhingra Committee appointed by the learned Company Judge to scrutinize the claims of the workmen has found the said claims at Rs. 51,95,03,803/-; that as per the report of the Official Liquidator, the claims of the seven secured creditors are to the tune of Rs. 93,37,90,231/- and that the Provident Fund Authorities have raised claims, upto the date of winding up, in the sum of Rs. 27,50,38,384/-. The only argument raised is that an appeal has been preferred against the Provident Fund assessment and which is still pending consideration.

5. Learned Company Judge has vide order dated 31.07.2012 impugned in Company Appeal No. 73/2012 directed payment of dues of the Provident Fund and distribution of the balance amount pari passu between the workers and the secured creditors.

6. The senior counsel for the appellant has argued that the secured creditors led by Dena Bank had in the year 2006 agreed to settlement of their dues on payment of Rs. 21.38 crores; that though the said monies were available from the sale proceeds of the five Units of the Company in Liquidation but could not then be released to the secured creditors owing to the objections then preferred to the sale and which objections were ultimately dismissed. He contends that the stand of the Banks that their settlement offer was valid till June, 2006 only and they are not bound by the same thereafter is unreasonable. He further, on instructions states that the Banks are at best entitled to reasonable interest on the settlement offer from the year 2006 till now.

7. Even though the counsel for the Banks has opposed and contended that the settlement offer was subject to payment being made by June, 2006 and the Banks are not bound by the same and are now entitled to insist upon the sale of remaining Faridabad Unit also (which the Ex-Management wants to retain) but we are of the opinion that the monies realized out of the sale proceeds of the remaining assets of the Company in Liquidation are not sufficient to meet the claims of the Provident Fund and workers and the Banks, even if the Banks are to be held bound by the said settlement offer. In the said settlement offer, the Banks, besides the sum of Rs. 21.38 crores were also entitled to 42% of the difference between the reserved price of Rs. 43/- crores and the actual price

fetched of Rs. 59/- crores. This coupled with interest even at 10% per annum would take the said settlement offer, as of today to in excess of Rs. 30/- crores. As aforesaid, a sum of Rs. 27,50,38,384/- is to be appropriated towards the Provident Fund dues. Admittedly there is no interim stay in the appeal preferred by the appellant. The balance amount remaining, is not sufficient to pay the workers as well as the secured creditors. The senior counsel for appellant has also not been able to disagree. We have enquired from the senior counsel for the appellant whether the Ex-Management is willing to infuse any funds from their own coffers. The answer is in the negative.

8. In the aforesaid state of affairs, we need not to go into the question as to whether the Banks are bound or not by their settlement offer inasmuch as the monies realized from the sale, till now of assets of the Company in Liquidation are not sufficient for the Scheme proposed. We accordingly dismiss Company Appeal No. 39/2011.

9. The senior counsel for the appellant fairly concedes that upon the dismissal of Company Appeal No. 39/2011, the Company Appeals No. 40/2011 and 73/2012 would also have to be dismissed. As far as Company Appeal No. 68/2011 is concerned, we are of the view that since the monies with the Company in Liquidation are sufficient for meeting the Provident Fund claims, the question of prosecution for non payment would not arise. The counsel for the RPFC also agrees. With this observation, Company Appeal No. 68/2011 is also disposed of.

No costs.

