
(2014) 06 MAD CK 0223

In the Madras High Court

Case No : Company Petition No. 266 of 2013 and C.A. Nos. 869 and 870 of 2013

Kotak Mahindra Bank Limited

APPELLANT

Vs

Sivananda Steels Limited

RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Companies Act, 1956 — Section 434, 434(e)

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 3(1)(o)

Citation : (2014) 6 MLJ 215

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Judgement

R. Sudhakar, J.—This Company Petition is filed for winding up of the respondent company and for appointment of the Official Liquidator to take charge of the assets of the respondent company. On 05.08.1995, the respondent company had entered into a hire purchase agreement with Upasana Finance Limited in respect of certain machinery for an aggregate value of Rs. 43,99,625/-, repayable in 36 instalments. A lease agreement was also entered into on 08.08.1995 for a sum of Rs. 25.00 lakhs, payable in 60 monthly instalments. Pending these hire purchase and lease agreements, the respondent company became sick and a reference was made under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA") before the Board of Industrial and Financial Reconstruction (hereinafter referred to as "BIFR"). The said reference was taken on file in Reference No. 107 of 2000. By order dated 22.9.2000, BIFR declared the respondent company as Sick Industrial Unit under Section 3(1)(o) of the SICA Act. Thereafter, BIFR, by order dated 09.08.2005, sanctioned a scheme taking the cut off date as 31.3.2003.

2. In the meanwhile, on 16.05.2006, the petitioner Kotak Mahindra Bank Limited, (hereinafter referred to as "KMBL") got the debts assigned in their favour from Upasana Finance Limited. On 18.4.2006, BIFR discharged the respondent company from the purview of SICA on the successful implementation of the sanctioned scheme. There is yet another transaction between the respondent

company and Upasana Finance Limited, which was also taken over by the petitioner bank, of which the Court is not presently concerned with.

3. The petitioner company issued a statutory notice dated 12.3.2007 under Section 434(e) of the Companies Act claiming a sum of Rs. 5,35,41,382/- in respect of the hire purchase and lease agreement entered into with Upasana Finance Limited. The respondent company, on 10.4.2007 responded to the said notice denying the liability as well as the claim, as not maintainable. Thereafter, on 15.4.2008, a sum of Rs. 19,92,244/- was paid by the respondent company, as per the scheme sanctioned by the BIFR, to the petitioner, which was declined by the petitioner on 16.4.2008 and thereafter on 5.5.2008, the petitioner company once again issued statutory notice under Section 434 of the Companies Act claiming a sum of Rs. 7,98,28,443/- as on 29.4.2008. This notice has been replied by the respondent company denying the liability as above.

4. In the meantime, there are certain litigations pending in respect of BIFR proceedings, which went upto the Supreme Court and the same went against the petitioner. Thereafter, the petitioner bank filed O.A. No. 200 of 2010 before the Debt Recovery Tribunal, Chennai. On 22.11.2010, the respondent company filed an interlocutory application for rejection of O.A. No. 200 of 2010. On 19.8.2011, the Debt Recovery Tribunal II, held that the hire purchase agreement entered into was covered under the Scheme and the lease agreement was not covered by the Scheme.

5. As against this order, the respondent has filed an appeal in M.A. No. 27 of 2012 before the Debt Recovery Appellate Tribunal, in so far as the order relates to allowing the claim that the lease transaction is not covered under the scheme. Learned counsel appearing for the petitioner submits that the same is in the condone delay stage, which is not disputed by the respondent company.

6. Pending the proceedings, on 03.4.2012, the present Company Petition has been filed for winding up of the respondent company with the plea that the respondent company is unable to pay its debts and hence has become commercially insolvent.

7. On a bare reading of the facts as narrated above, the entire cause of action for filing up this petition for winding up arises out of a transaction which had taken place in the year 1995 and that prima facie appears to be part of a subject matter before BIFR under Section 15(1) of the SICA Act. It is also to be noticed that BIFR has already sanctioned a scheme and the respondent company has been discharged on the implementation of the sanctioned scheme. If the interpretation given by the Debt Recovery Tribunal has to be considered, the issue whether the liability subsists will have to be first decided in the appeal and thereafter, the issue can be thrashed out as a case of admitted liability. Till such time the Debt Recovery Appellate Tribunal is seized of the matter on the substantial issue on which the claim is made in the present petition, which is a subject matter of proceeding before the Debt Recovery Appellate Tribunal, this

Court finds that there is no good ground to entertain this petition. Accordingly, this Company Petition stands dismissed. No costs. Consequently, C.A. Nos. 869 and 870 of 2013 are also dismissed.