(2007) 02 GUJ CK 0024

In the Gujarat High Court

Case No : Company Application No. 30 of 2007 in Company Application No. 663 of 2006

Kotak Mahindra Bank Ltd. APPELLANT

Vs

Balaram Cements Ltd. RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:
Companies Act, 1956 — Section 391

Citation : (2008) 146 CompCas 1

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : N.K. Pahwa, for the Appellant; P.C. Kavina and Sudhir M. Mehta, for the Respondent

Judgement

M.R. Shah, J.—By way of this petition, the applicant Kotak Mahindra Bank Ltd., considered to be a secured creditor of the company in liquidation has prayed for an appropriate order to recall the order dated December 26, 2006, made in Company Application No. 663 of 2006 and to cancel the meetings of the shareholders and the secured creditors of the respondent-company scheduled to be held on January 29, 2007.

It is required to be noted that by order dated December 26, 2006, passed in Company Application No. 663 of 2006, on an application made by the respondent-company, this court passed an order of convening the meetings of the shareholders and the creditors of the respondent-company to consider and if thought fit, approve with or without modification the proposed scheme of arrangement and/or compromise.

2. Relying upon the judgment of the hon''ble Supreme Court in the case of NGEF Ltd. Vs. Chandra Developers Pvt. Ltd. and Another, Shri Pahwa, learned advocate appearing on behalf of the applicant has submitted that in view of the fact that the respondent-company is before the Board for Industrial and Financial Reconstruction and the Board for Industrial and Financial Reconstruction is seized

of the matter and Industrial Development Bank of India is appointed as an operating agency and Industrial Development Bank of India as an operating agency is required to submit the scheme for rehabilitation and/or revival, the proposed scheme of arrangement and/or compromise before this court u/s 391 of the Companies Act, 1956, is not maintainable. The learned advocate appearing on behalf of the applicant wanted to make number of submissions on merits. However, in view of the discussion hereinafter, this court is of the prima facie opinion that all these questions are not required to be considered at this stage and are required to be considered only at the time when the respondent-company approaches this court by way of appropriate company petition to consider and/or to approve/sanction the scheme of arrangement. At that stage all the objections or submissions raised on behalf of the applicant can be considered and therefore, this court has not permitted the learned advocate appearing on behalf of the applicant to make submissions on merits inclusive of the jurisdiction of this court and/or the maintainability of the proposed scheme of arrangement/compromise.

3. It is required to be noted that by order dated December 26, 2006, this court has only passed an order to convene the meetings of the shareholders and the creditors of the respondent-company and if thought fit, approve with or without modification the proposed scheme of arrangement and/or compromise. No further order has been passed by this court. The meeting of the shareholders and the creditors are only with a view to know the wishes of the shareholders and the creditors and nothing further than that. To consider the wishes of the shareholders and the creditors and to call the meetings for that purpose, it cannot be said that this court is at present considering the proposed scheme of arrangement and/or compromise. Only after the proposed scheme is considered and approved by the shareholders and the creditors, the scheme is to be submitted before this court for its sanction. As held by the hon''ble Supreme Court in the case of Rainbow Denim Ltd. Vs. Rama Petrochemicals Ltd., , appropriate time for company judge to consider the scheme would be subsequent to approval thereof by shareholders and creditors of the company. Thus, the objections and the submissions made on behalf of the applicant at this stage are not required to be considered. The appropriate time to consider the objections and the submissions made on behalf of the applicant, which are raised in the present company application and that may be made against the proposed scheme of arrangement/compromise would be as and when the company petition is filed by the respondent-company to consider the proposed scheme of arrangement before this court. Under the circumstances, the present company application is not entertained at this stage. However, all the questions, including the maintainability of the company petition and the proposed scheme of arrangement and/or compromise at the instance of the respondent-company before this court pending the proceedings before the Board for Industrial and Financial Reconstruction, with regard to the jurisdiction of this court to entertain the company petition to consider and sanction the scheme of arrangement/

compromise pending the reference before the Board for Industrial and Financial Reconstruction, are kept open and for which this court has not expressed any opinion on merits. At this stage, this court has only passed an order to convene the meetings of the shareholders and the creditors of the respondent-company to consider and if thought fit, approve with or without modification the proposed scheme of arrangement and/or compromise, by which it cannot be said that this court has at present entertained the company petition to consider the scheme of arrangement/compromise. It will also be open for the applicant to raise the objections with regard to the entertainability of the company petition even at the stage of admission of the company petition that may be filed and it will also be open for the respondent to submit that all these questions are not required to be considered at the time of admission. All these questions are kept open. It is also observed that even the order dated December 26, 2006, passed in the aforesaid application is without prejudice and in any way affecting the proceedings before the Board for Industrial and Financial Reconstruction.

4. This application is accordingly disposed of at this stage with above observations, without deciding anything on merits of the case.

