

(1999) 09 KL CK 0011
In the High Court Of Kerala
Case No : M.F.A. No. 994 of 1999

Mrs. Vilasini Jayaprakash

APPELLANT

Vs

St. Mary's Finance Ltd.

RESPONDENT

Date of Decision : 08-09-1999

Acts Referred:

Companies Act, 1956 — Section 391

Reserve Bank of India Act, 1934 — Section 45QA, 45QA(2)

Citation : (2000) 99 CompCas 54

Hon'ble Judges : R. Rajendra Babu, J;K.K. Usha, J

Bench : Division Bench

Advocate : K. Surendra Mohan, for the Appellant;

Final Decision : Dismissed

Judgement

K.K. Usha, J.—This is an appeal from the order passed by the Company Law Board, Southern Region Bench, Chennai, in an application filed by the appellant. The appellant is a depositor in St. Mary's Finance Ltd. (hereinafter referred to as "the company"). He made an application u/s 45QA(2) of the Reserve Bank of India Act, 1934 (hereinafter referred to as "the Act"), contending that the company failed to repay the deposit with interest therein as per the details furnished in the application. The Company Law Board, by its order dated May 24, 1999, took the view that since an application u/s 391 of the Companies Act filed by the company is pending before this court, it would not be appropriate for the Board to pass any order on the application till the disposal of the same. It was observed that if this court sanctions the scheme, then the applicant before the Board would be bound by the scheme and if, for any reason, this court does not approve the scheme, it is open to the applicant to move the Company Law Board for appropriate actions.

2. It is contended by learned counsel for the appellant that the Company Law Board has abdicated its jurisdiction u/s 45QA and it is under a misapprehension that when an application u/s 391 is pending before this court, no orders can be

passed u/s 45QA of the Act.

3. We do not find any merit in this contention. On going through the order under challenge, we find that even though there is a reference to the overriding effect of the provisions contained under Chapter IIIB in the light of Section 45QA as a matter of fact, the Board has considered the application on the merits u/s 45QA. Sub-section (2) of Section 45QA reads as follows :

"Where a non-banking financial company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted u/s 10E of the Companies Act, 1956 (1 of 1956), may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order :

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the non-banking financial company and the other persons interested in the matter."

4. It is clear from the above provision that while considering an application u/s 45QA, the Company Law Board has to take into consideration the necessity to safeguard the interest of the company and the depositors. It is necessary to look into public interest also. The power given under Sub-section (2) of Section 45QA is in the nature of a discretionary power to be exercised taking into consideration all the abovementioned aspects. A reading of paragraph 5 of the impugned order would show that the Company Law Board took into consideration the pendency of the proceeding u/s 391 of the Companies Act, before the High Court and the ultimate effect of an order to be passed by the High Court in an application on all the creditors including the applicant and also the company. It took into consideration the effect of such a scheme on all creditors including judgment-creditors and even on decrees passed before the scheme of composition was accepted by the court. We are of the view that reference to the proceeding u/s 391 is not an irrelevant consideration. In examining the question whether an individual application filed by a creditor is to be separately considered and relief granted, it is only just and proper for the Company Law Board to have taken into consideration the pendency of a proceeding u/s 391 of the Companies Act before this court. Therefore we are of the view that while exercising discretionary power u/s 45QA, the Company Law Board has not taken into consideration any irrelevant factor. Under these circumstances, the order passed cannot be described as one which is vitiated by any error of law or one passed in abdication of its jurisdiction u/s 45QA. The interest of the applicant had been further protected by the Company Law Board by observing that she is at liberty to move the Board, if, ultimately, the scheme is not approved by the High Court.

5. We find no merit in this appeal. In the result, the appeal fails and it stands

dismissed.