(2005) 09 OHC CK 0037

In the Orissa High Court

Case No : Company Act Case No. 17 of 2005

Neelachal Electronics and Telecommunication (Pvt.) Ltd. APPELLANT

Vs

Shivangi Electronics Pvt. Limited and Another RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Companies Act, 1956 — Section 442, 446, 446(1), 529A(1), 537
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19(22), 34, 34(1)

Citation : (2006) 2 BC 529 : (2005) 100 CLT 657 : (2005) 2 OLR 545

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—Copet No. 17 of 2005 has been filed by . Nilachal Electronics and Telecommunication Pvt. Ltd. praying for winding up of the opp.party-company . Shivangi Electronics Pvt. Ltd. Along with the said application for winding up, the petitioner-company filed Misc. Case No. 19 of 2005 making a prayer for an order of stay of operation of the order dated 17.7.2002 passed in T.C. No.77 of 2001 by the Debts Recovery Tribunal, Cuttack and for stay of further proceedings in R.P. No.058/2002/CTC pending before the Recovery Officer, Debts Recovery Tribunal, Cuttack and for a further direction directing the Recovery Officer, Debts Recovery Tribunal, Cuttack not to deliver possession of the property mentioned in the schedule of the said application to any one without leave of this Court.

2. On 6.5.2005 after hearing the applicant, an order was passed directing that further proceedings in R.P. No.058/2002/ CTC pending before the Recovery Officer, Debts Recovery Tribunal, Cuttack shall remain stayed and the property in execution of the certificate for recovery shall not be handed over to the purchaser.

3. On 10.5.2005 and 13.5.2005 Misc. Case Nos.23 and 26 of 2005 were filed by Orissa Diesel Engines Pvt. Ltd. and the State Bank of India respectively praying for an order allowing them to intervene in the matter. Along with the said Misc. Cases, the said intending intervenors filed separate Misc.Case Nos.24 and 25 of

2005 praying for recalling/vacating the interim order passed on 6.5.2005. Misc. Case Nos.23 and 26 of 2005 were disposed of by order dated 24.6.2005 allowing the intervention of . Orissa Diesel Engines Pvt. Ltd. and the State Bank of India.

4. Heard learned counsel for the respective parties on the question of recalling/ vacating the interim order passed on 6.5.2005.

5. Learned counsel for the intervenor . Orissa Diesel Engines Pvt. Ltd. submitted that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, "the R.D.B. Act") is a special Act and even taking the Companies Act, 1956 as a special Act, since the R.D.B. Act came into force later, in the point of time the provisions thereof shall prevail over the former i.e. the Companies Act, 1956 and will have an overriding effect. He, therefore, contended that by applying the provisions of Companies Act, 1956, proceeding under the R.D.B. Act cannot be stayed. In support of his contention learned counsel relied upon the decision in the case of Allahabad Bank Vs. Canara Bank and Another, .

6. Mr. Patnaik, learned counsel for the petitioner, on the other hand, submitted that this Court in a proceeding for winding up under the Companies Act, 1956 has ample jurisdiction to stay any other proceeding initiated against the Company intended to be wound up, in an appropriate case, for protecting the interest of the petitioner. He further submitted that if all such proceedings pending prior to the filing of the application for winding up are transferred to this Court, there can be a fair and uniform adjudication of the said cases for recovery of the dues of the debtors either secured or unsecured.

7. In reply to the submissions on the question of law, Mr. Patnaik, relied upon the decision in the case of Andhra Bank v. Official Liquidator and Anr. 2005(3) SCALE 178 and submitted that in the said case, the Apex Court has overruled the decision in the case of Allahabad Bank (supra).

8. In the case of Allahabad Bank (supra), the dispute was between two Nationalized Banks. Facts of the said case reveal that Allahabad Bank obtained a simple money decree against the debtor company from the Debts Recovery Tribunal, Delhi under the R.D.B. Act and the claim of the respondent-Canara Bank as a secured creditor was still pending before the said Debts Recovery Tribunal, Delhi against the same company. An application for winding up was filed by . Ranbaxy Ltd. against the said debtor company before the learned Company Judge under the provisions of the Companies Act, 1956. The order of stay of further proceeding pending before the Recovery Officer under the R.D.B. Act was passed by the learned Company Judge. It appears that by that time no winding up order was passed nor a provisional liquidator was appointed as contemplated u/s 446(1) of the Companies Act, 1956. The Canara Bank contended before the Supreme Court that the Allahabad Bank was obliged to seek leave of the Company Court under the Companies Act and the Company Court can stay those proceedings as aforesaid under Sections 442 and 537, for the ultimate purpose of deciding the priorities in the event of any order of winding up or appointing

provisional liquidator, will be passed u/s 446(1) of the Companies Act, 1956. The Allahabad Bank, however, contended that the Tribunal under the R.D.B. Act can itself deal with the question of appropriation of sale proceed in respect of the sale of the company''s properties held at its instance. On the above premises, considering the provisions of Sections 17, 18 and 34 of the R.D.B. Act, the Supreme Court held that the certificate granted u/s 19(22) of the R.D.B. Act is to be executed only by the Recovery Officer and no dual jurisdiction at different stages are contemplated. It was further held that the R.D.B. Act overrides other laws to the extent of "inconsistency". In the case of Allahabad Bank (supra), it was held by the Supreme Court in paragraph-25 of the judgment as follows :

"25. Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil Court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act. Point 1 is decided accordingly."

9. With regard to the question as to whether provisions of Sections 442 and 537 and Section 446 of the Companies Act are overridden by the R.D.B. Act, the Supreme Court held that in view of Section 34(1) of the R.D.B. Act, the said Act overrides the Companies Act to the extent of "inconsistency" between the Acts. In the case of Andhra Bank (supra), the case of Allahabad Bank (supra) came up for consideration before a larger Bench of the Supreme Court. It appears that the case of Andhra Bank (supra) was referred to a larger Bench by a Division Bench of the Supreme Court doubting the correctness of the statements of law contained in paragraph-76 of the judgment in the case of Allahabad Bank (supra). It is, therefore, clear that the Supreme Court in the case of Andhra Bank (supra) was considering the correctness of the findings in paragraph-76 of the judgment in the case of Allahabad Bank (supra). The said paragraph-76 was with regard to a question as to whether the amounts realized under the R.D.B. Act at the instance of the appellant therein, i.e., Allahabad Bank which was an unsecured creditor, can be straight away released in its favour. Answering the said question, the Supreme Court held that the workmen''s dues have priority over all other creditors, secured and unsecured because of Section 529-A(1)(a) of the Companies Act, 1956. Relying upon the decision in the case of National Textile Workers'' Union and Others Vs. P.R. Ramakrishnan and Others, , the Supreme Court held that no secured or unsecured creditors including banks or financial institutions are to be paid before workmen''s dues are paid. Discussing the said paragraph-76 of the judgment, the Supreme Court in the case of Andhra Bank (supra) held that a stray observation was made in paragraph-76 of the judgment in the case of Allahabad Bank (supra) to the effect that "workmen''s dues" have priority over all other creditors, secured and unsecured because of Section 529-A(1)(a) of the Companies Act, 1956 and such a question did not arise in the case of Allahabad Bank (supra) as Allahabad Bank was indisputably an unsecured creditor. On the above findings, the Supreme Court held that thus :

"Such an observation was, thus, neither required to be made keeping in view the fact situation obtaining therein nor does it find support from the clear and unambiguous language contained in Section 529-A(1)(a). We have, therefore, no hesitation in holding that finding of this Court in Allahabad Bank (supra) to the aforementioned extent does not lay down the correct law."

10. In view of the above, I am unable to accept the contention of Mr. Patnaik, learned counsel for the petitioner that the decision in the case of Allahabad Bank (supra) has been overruled by the Supreme Court in the case of Andhra Bank (supra).

11. In view of the ratio of the decision of the Supreme Court in the case of Allahabad Bank (supra), I have no hesitation to hold that in the present applications, where neither orders for winding up nor appointment of provisional liquidator have been passed, this Court by exercising jurisdiction under the provisions of the Companies Act, 1956 cannot stay further proceedings pending before the Debts Recovery Tribunal under the R.D.B. Act either for grant of recovery certificate or for recovery of the dues after such certificate is granted, under the provisions of the said Act. I, therefore, have no hesitation in vacating the interim order passed by this Court on 6.5.2005.

The interim order dated 6.5.2005, therefore, stands vacated.

The Misc.Cases are accordingly disposed of.