
(2008) 10 RAJ CK 0016
In the Rajasthan High Court

Perfect Threat Mills Ltd.

APPELLANT

Vs

None

RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:

COMPANIES ACT, 1956 — Section 291, 292, 391, 392
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 20

Citation : (2008) 10 RAJ CK 0016

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—It will be just and proper to recapitulate the facts relating to the present prayer made by the defaulter company-M/s Perfect Threat Mills Limited by way of 10th additional affidavit submitted in Company Application No. 3/2006 in Company Petition No. 2/2004.

2. The scheme for rehabilitation of defaulter company M/s Perfect Threat Mills Limited was sanctioned by the AAIFR vide order dated 11.9.1997. Its progress in implementation of the scheme was reviewed in hearing held on 5.7.1999. After hearing the submissions, the bench concerned came to the conclusion that the scheme sanctioned by the AAIFR had failed primarily because of the non-fulfillment of the basic commitments made in the sanctioned scheme by the Company/its promoters. As such, after forming a prima facie opinion u/s 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, to wind up the Company, a show cause notice was issued on 14.7.1999 calling for the objections/suggestions or alternate proposals from the interested parties . The responses were received and BIFR took for consideration the matter and after hearing the concerned parties, vide order dated 28.9.1999 confirmed its earlier prima facie opinion that it would be just, equitable and in public interest if the sick company M/s Perfect Thread Mills Limited be wind up u/s 20(1) of the Companies Act. Consequently, the matter was referred to this Court vide order

dated 28.9.1999, upon which Company Petition No. 5/2000 was registered. During pendency of Company Petition No. 5/2000, company submitted Company Application No. 9/2003 for direction of court for holding meeting of secured creditors of the applicant Company for approval of ?scheme of compromise and arrangement? proposed. In said company application, another application being Company Application No. 2/2004 was submitted, stating therein the reason for non-implementation of sanctioned scheme and explanations thereto were submitted by the Company and Company submitted that before Company Petition No. 2/2004, the Company has preferred application being Application No. 9/2003 wherein it has prayed that meeting of the secured creditors of the petitioner- Company be held and convened for the purpose of considering and if thought fit, approving with or without modification, the compromise and arrangement, embodied with in the proposed scheme of compromise and arrangement. The said application No. 9/2003 was allowed by this Court vide order dated 7.10.2003. The High Court directed that the meeting of the secured creditors of the applicant Company be held on Friday, the 28th November,2003. The Chairman of the meeting was appointed by order of the High Court and the meeting was duly held and convened. The matters were considered. Seven representatives of secured creditors of the Company attended the meeting and ultimately, the scheme of the compromise of arrangement was submitted before this Court. After hearing the parties, this Court in its order dated 19.4.2004 held that there are no grounds or circumstances to refuse to grant approval for the scheme submitted before the court and this Court also held that the requirements of the provisions of Section 291 of the Companies Act, 1956 are satisfied and there appears to be cogent grounds for accepting the scheme, which is proposed. The scheme is genuine and bonafide and in the interest of the creditors of the petitioner Company. Consequently, the Company Petition No. 2./2004 was disposed of by allowing Company Application No. 9/2003 and this Court approved the arrangement on the terms and conditions and in the manner as stated in the scheme of arrangement and compromise, as modified at Annexure-F to the Company Petition. The reliefs in terms of paragraph 15(a) and (b) in Company Petition No. 2/2004 were granted. The modified scheme (Annexure-F) to the petition was made part of order of the High Court dated 19.4.2004.

3. In the meeting held in pursuance of the court order dated 7.10.2003, which was held on 28.11.2003, attended by 7 secured creditors of the Company, held value of Rs. 12,14,56,568/-as per the books of the Company as on 31.3.2003. 92.57% in value of the secured creditors voted in favour of the scheme and only one; Rajasthan Financial Corporation(RFC), who had 7.43% in the value voted against the scheme and who is also opposing the present application for further modification in the scheme whereas rest of the creditors agreed for modification in the original scheme as proposed by the defaulter Company.

4. As per the said sanctioned scheme, the Company was required to make payment of One Time Settlement (OTS) of all dues amount payable as per the

schedule thereto after adjusting 50% of the OTS of dues amount paid to each secured creditor together with interest @ 11.5% per annum with effect from 1.8.2002 within 30 days of the day of sanction of the scheme. The Company submitted in total nine affidavits before this last 10th affidavit to show that there were legitimate reason for not clearing of the dues of the creditors in given time and lastly submitted that some land of the Company has been given under acquisition proceedings because of the construction of National Highway by the National Highway Authorities of India and, therefore, the Company is likely to get substantial amount, which will be paid against various dues of the creditors. The defaulter Company submitted about what efforts they made for securing and getting the payment from the Central Government on account of the acquisition of their land.

5. It will be worthwhile to mention here that in Company Application No. 3/2006 in Company Petition No. 2/2004, the Company prayed for modification in the original scheme and sought direction that the land acquisition compensation amount that the Company would become entitled to receive, would be deposited by the competent authority in a 'No Lien Escrow Account' with one of the secured creditors. On this application, this Court vide order (in Company Application No. 3/2006) authorised the Canara Bank to receive the land acquisition award amount and thereafter directed vide order dated 26.2.2008 that the Canara Bank shall distribute the amount already lying with them on pro-rata basis to the secured creditors, i.e. the financial institution and the banks as per the scheme. Thus the Canara Bank distributed Rs. 1,94,43,226/- to the six secured creditors on 7.3.2007 and Rs. 18,27,892/- has been kept in reserve for remittance to Kotak Mahindra Bank Limited (KMBL) on their completing charge modification procedure. There were few more orders which are not very much relevant for the purpose of deciding this petition but on the Company's seventh additional affidavit filed in Company Application No. 3/2006 submitted on 11.2.2008, this Court directed the Canara Bank to further distribute amount of Rs. 12,08,773/lying with the Bank to the secured creditors in line with the pattern of distribution adopted already vide order dated 18.1.2007. Then the defaulter Company submitted eighth affidavit, pointing out that what transactions have been carried on 10.3.2008 in response to the direction of this Court as ordered on 26.2.2008. The Company prayed in eighth affidavit for grant of further extension of time for payment of balance OTS of dues amount as per the sanctioned scheme with interest till 30.6.2008. According to the Company, since the land acquisition matter remained pending before the District Judge, Udaipur, it was not possible for the Company to make payment balance OTS of dues amount, then the Company negotiated with Kotak Mahindra Bank Limited (KMBL) for the Corporate Term Loan of Rs. 306 lacs to utilize for payment to existing lenders, i.e. Secured creditors as per the balance amount of OTS of dues with interest payable as per the sanctioned scheme and for other purposes. The said bank, KMBL sanctioned the said facility to the defaulter Company vide letter dated 22.5.2008 (Annexure-KKK) annexed to the ninth additional affidavit.

Since the matter remained pending and, therefore, the validity of sanction was required to be extended which was extended by the said Bank KMBL vide letter dated 31.8.2008 (copy of the letter dated 31.8.2008 is Annexure-OOO). By this time, the total amount already distributed by the Canara Bank to the creditors reached to the amount of Rs. 2,24,79,890/-(including the amount kept in reserve for remittance towards principal amount of OTS of dues and interest accrued. The Company also annexed a statement showing principal amount of term loan and C.C. Account Borrowings, OTS of dues amount, interest accrued and accruing till 31.8.2008, payments made on 7.3.2007 and 10.3.2008 which is marked as Annexure-PPP. According to the Company, as per the terms of the scheme, further simple interest @ 11.5% per annum from 1.9.2008 till actual date of balance amount is payable is also payable to the secured creditors.

6. The defaulter Company made efforts by contacting FIs and Banks regularly and held meetings and talks with them and informed that the Company has been able to obtain sanction of Corporate Term Loan from KMBL and at the request of the Company, all the FIs and Banks (except RFS) have agreed to extend the time for payment of balance OTS of dues amount. On the 10th additional affidavit of the Company, the Company received letters from: (i) Industrial Development Bank of India (IDBI) dated 1.7.2008 agreeing to extend the date upto 31.7.2008 and the IDBI also indicated that they would issue further letter extending the date upto 30.9.2008, (ii) Industrial Investment Bank of India Ltd. (IIBI) also indicated that are agreeable to extend the date similarly but as they are winding up their operations, it is difficult for them to issue a letter but they have no objection in this regard, (iii) Rajasthan State Industrial Development & Investment Corporation Ltd. (RIICO) dated 2.9.2008 agreeing to extend the date upto 30.9.2008, (iv) Canara Bank dated 23.8.2008 agreeing to extend the date upto 30.9.2008 and (v) State Bank of Bikaner and Jaipur (SBBJ) dated 27.6.2008 agreeing to extend the date upto 30.9.2008. The copies of the said letters are submitted along with 10th additional affidavit and marked as Annexure-QQQ.

7. Here it will be just and proper to recapitulate that as per sanctioned scheme-F and as per the Clause 5 of the said scheme, there was provision for simultaneous and at the same point of time release and handing over of the title deeds and other securities on payment of balance OTS of dues amount together with interest and creation of mortgage on the property so released in favour of the new lender. The company by its ninth additional affidavit and Judge's Summons issued by this Court as per Order dated 27.5.2008, the prayer for modification in said Clause 5 of Annexure-F so as to effect to the terms of corporate terms loan from KMBL.

8. The objection to the modification in the scheme is from the Rajasthan Financial Corporation(RFC). The Company tried to persuade the RFS also to fall in line with other creditors for modification in the scheme and adjust the amount remitted to them by the Canara Bank in terms of sanctioned scheme and there

were personal meetings of the Company's representatives with the CMD of the RFC and its GM on 19.6.2008 but till now the RFC is not agreeable to the extension of time sought by the Company.

9. The petitioner-Company submitted that the sanctioned scheme, as per the order of this Court dated 19.4.2008 itself passed u/s 391(2) of the Companies Act, 1956, is binding on RFC as majority of the secured creditors representing 92.57% in value (requisite majority of three-fourth in value) had agreed to the scheme of compromise. Now presently also the secured creditors supported the modification in the scheme except RFC and may be by unsecured creditors, the RFC should fall in line with the other secured creditors only. It is submitted that that Company has already paid about 58% of the principal OTS of dues amount and interest, totaling Rs. 2,24,79,890/-(including amount kept in reserve), therefore, it will be in the interest of all the share holders as well as the creditors and further in the interest of the Company, to modify the scheme. The Company submitted that the Company has 700 workmen and other categories of employees including contractors and franchise and if the scheme is not modified as prayed in the Company Application No. 3/2006 in Company Petition No. 2/2004 and subsequent affidavits submitted by the Company, the efforts for revival of the Company will get frustrated and the Company is likely to be wound up and all the workers and other categories of employees are likely to be deprived of their livelihood. It is submitted that the scheme will not prejudicially affect the secured creditors as they would continue to hold the securities till full payment of the balance OTS of dues amount is made as shown in Annexure-PPP to the 10th additional affidavit submitted by the Company.

10. The other creditors, as mentioned above, during course of arguments shown their consent for modification of the scheme dated 19.4.1994, whereas learned Counsel Shri Dinesh Mehta appearing on behalf of Rajasthan Financial Corporation(RFC) opposed the modification on the ground that the Company was supposed to pay the all dues within 30 days from the date of sanction of the scheme by the High Court in Company Petition No. 2/2004. The Company miserably failed to do so even after more than four years and, therefore, the original sanctioned scheme already stands frustrated and, therefore, this Court may proceed to pass order on the request sent to this Court by the BIFR vide order dated 28.9.1999. It is submitted that the fund of the RFC is public fund and the RFC is the custodian of the public fund and the RFC cannot loose its money by giving huge concession to the defaulter Company which will be against the interest of the financial institution and in consequence, against the interest of the public. The learned Counsel Shri Dinesh Mehta also submitted that even for private creditors, extension of time for implementation of scheme will be seriously prejudicial to the interest of the creditors. It is also submitted that the matter has already been considered by the experts before sending recommendations for winding up the defaulter Company and, therefore, this Court may not pass an order contrary to the opinion expressed by the expert body and further to review the reasons given by the BIFR.

11. The learned Counsel Shri P.K. Bhansali appearing on behalf of Canara Bank submitted that since the Company had to pay the amount by 30.9.2008 and since there is very short time left, therefore, he cannot agree for extension of time beyond 30.9.2008 as the bank's competent body's meeting cannot be convened in such a short period as the court vacations for Dashera Break will be starting from 29.9.2008 and the Court will not function after 26.9.2008 as there will be two holidays during this period. However, after telephonic conversation, learned Counsel Shri P.K.Bhansali submitted that in that situation the Court may pass appropriate order.

12. So far as first objection raised by learned Counsel Shri Dinesh Mehta that there is no option left for this Court except to pass order to wind up the Company is concerned, that contention is liable to be rejected in view of the first reason that Section 392 of the Companies Act gives wide power to the Company Court to not only sanction a compromise or an arrangement in respect of a Company but also gave ample power power to amend and modify the scheme any time, therefore, this Court is required to look into all relevant aspect before this Court may declare that sanctioned arrangement has failed. Not only this but the objecting creditor was party to the order of this Court dated 19.4.2004 wherein the RFC itself also submitted their affidavit dated 19.4.2004 stating therein that the RFC has agreed to fall in line with other secured creditors. The question before this Court now remains is that whether this Court can modify the sanctioned scheme which was sanctioned under Sub-section (1) of Section 292 of the Companies Act, 1956. Sub-section (2) as well as Clause (b) to Section 392(1) are complete answer to the said objection raised by learned Counsel Shri Mehta which (Sec.392(2)) specifically provides that if tribunal (court) is satisfied that the compromise or an arrangement sanctioned u/s 391 cannot be worked satisfactorily with or without modifications, it may, either or its own motion or on the application of any person interested in the affairs of company, make an order winding up the company. Therefore, it is clear from Sub-section (2) of Section 392 of the Companies Act, 1956 that it is the duty of the court (tribunal) to record satisfaction before ordering winding up of company that compromise or arrangement sanctioned u/s 391 cannot be worked satisfactorily with or without modifications. Hence, when the compromise or arrangement can be worked out as such or by modifying compromise or arrangement, then there cannot arise any question of winding up of the company.

13. The facts mentioned in detail above clearly indicate that during this period secured creditors were paid the amount not only against the interest but also against the principal amount. Total more than 58% or above that amount has been paid by the company to the creditors. It is not disputed that the Company is running and it has 700 workers. The majority of creditors, rather say substantial creditors agreed for modification in the scheme then as per Sub-section (2) of Section 391 of the Companies Act, 1956, the minority creditors are required to fall in line with the majority. Otherwise also, this Court is of the view that in the facts referred above and particularly when the Company is running

and paying the loan amount with interest to the creditors and having large number of workers with it, there cannot be any justification for winding up of the Company by upsetting the earlier order of this Court dated 19.4.2004 by which the Company Petition has already been decided. The present matter is with respect to the modification in the scheme already sanctioned by the High Court and there is no legal and just reason for re-opening the Company Petition No. 2/2004, at the request in counter to the application of defaulter Company-M/s Perfect Thread Mills Limited.

14. Before parting with, it will be just and proper to note the power of the court u/s 392(2) of the Companies Act, 1956. The power under Sub-section (2) of Section 392 of the Companies Act, 1956 can be exercised by the High Court under Sub-section (2) of Section 392 even suo moto and the object of it is to see that if the compromise or arrangement can be worked out satisfactorily then no order to wind up Company be made, therefore, extension of time beyond the period asked for by the applicant also can be granted by this Court. It is a fit case for extension of time for making payment to the secured creditors beyond a period prayed for by the Company in its 10th additional affidavit because of the reason that the matter came up before this Court only on 23.9.2008 the last date for payment proposed was 30.9.2008 and the Dashera Break came in between and the courts are likely to open on 13.10.2008 which is the date after the period for which the consent has been given by the creditors for extension of time for payment of dues by the Company. In view of the above reason, it will be just and proper to extend the time of last date for payment upto 31.10.2008 in place of upto 30.9.2008.

15. Consequently, the Company Application No. 3/2006 is allowed but in terms of the prayer made in 10th additional affidavit, by taking note of the subsequent events and the time for payment of OTS of dues amount as per the sanctioned scheme is extended upto 31.10.2008. The rest of the prayers in terms of the prayers made in 10th additional affidavit in para No. 30 are granted. The Annexure- PPP annexed to 10th additional affidavit shall form part of this order.