(1998) 02 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 222 of 1997

Punjab National Bank — APPELLANT

Vs

Amrit Cellulose Ltd. and others — RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:
Companies Act, 1956 — Section 446

Citation : (1999) 97 CompCas 126 : (1998) 118 PLR 679 : (1998) 2 RCR(Civil) 169

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : H.R. Bansal, for the Appellant; J.S. Narang, R.S. Rai and S.S. Aulakh, for the Respondent

Judgement

Swatanter Kumar, J.—Punjab National Bank (hereinafter referred to as "the bank") has filed this petition u/s 446 of the Companies Act, 1956, for permission to present and prosecute an application u/s 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, before the Debt Recovery Tribunal, Jaipur, against the respondents herein.

3. In response to the notice issued in this petition, the respondents have put in appearance through their counsel.

4. I have heard learned counsel for the parties.

5. The facts to which no dispute can be raised are that Amrit Cellulose Limited is stated to be not in a position to pay its creditors and a company petition for winding up of the company, being C.P. No. 69 of 1995, was filed before this court. Vide order dated October 10, 1997, the company was ordered to be wound up and the official liquidator attached to this court was appointed as liquidator of the company under the provisions of the Companies Act.

6. The respondent-company is having its registered as well as head office at Chandigarh and they had approached the bank for seeking financial assistance.

The bank had provided Rs. 100 lakhs financial assistance to the respondent-company which defaulted to repay the amount and as on September 30, 1997, under various accounts a sum of Rs. 2,16,43,702 is stated to be due and payable to the bank by the respondent-company. Respondent No. 1 is the company while respondents Nos. 2 to 5 are the erst-while directors and guarantors for the repayment of the loan of the bank. Respondents Nos. 6 to 8 are the other secured creditors having the charge of the property of respondent No. 1 company. Respondent No. 9 is the official liquidator appointed by this court, the company being under liquidation. It is not even disputed by the petitioner that respondents Nos. 6 to 8 are secured creditors and they have lien on the assets of the company. The copy of the proposed application to be filed before the Debt Recovery Tribunal has been placed on record as annexure "A" to the main petition. From a bare reading of this proposed application shows that the aforestated amounts are due to the petitioner from the respondent-company. There appears to be no legal impediment as to why permission prayed for be not granted to the bank.

7. Learned counsel appearing for the respondents have not pointed out anything on record to show that the proposed petition is barred under any law.

8. The company court which has ordered winding up of the company has a duty to protect the assets of the company but at the same time it must ensure expeditious disposal of the suits and proceedings filed by and against the company if the company court itself cannot dispose of the pro-ceedings expeditiously. Normally, there should not be any impediment for granting such permission to the bank to prosecute the case before another forum, specially when such forum is provided under the statute. The company court can grant leave in its discretion which may be conditional or unconditional depending on the facts and circumstances of the case. Reference in this regard can be made to a detailed judgment of this court in the case of Industrial Finance Corporation of India v. Rama Fibres Ltd. (C.P. No. 159 of 1997 decided on 21-1-98 since reported in [1999] 97 Comp Cas 80).

9. For the reasons aforestated, this petition is allowed. The bank is granted leave u/s 446 of the Companies Act to present the accompanying proposed petition, annexure A, to the main petition before the Debt Recovery Tribunal, Jaipur, and pursue the same. However, the grant of leave is conditional that the recovery certificate/decree passed by the Tribunal on this petition would not be executed against the assets of the company without the specific leave of this court to,that effect at that stage.

10. This petition is accordingly disposed of. There shall be no order as to costs.

