

(1998) 02 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : C.A. No. 275 of 1997 in C.P. No. 27 of 1983

Punjab National Bank

APPELLANT

Vs

Vedson Engineers Pvt. Ltd.

RESPONDENT

Date of Decision : 26-02-1998

Acts Referred:

Companies Act, 1956 — Section 446

Citation : (1999) 98 CompCas 225 : (1998) 119 PLR 70 : (1998) 3 RCR(Civil) 216

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Judgement

Swatanter Kumar, J.—This petition u/s 446 of the Companies Act, 1956, read with rule 9 of the Companies (Court) Rules, 1959, has been filed by the Punjab National Bank for leave to continue its execution proceedings in furtherance to the judgment and decree passed in their favour by the Sub-Judge, Chandigarh, for recovery of Rs. 34,16,808.65 dated February 28, 1990. This execution petition has been transferred and is now pending before the Debt Recovery Tribunal, Jaipur.

2. The necessary facts are the applicant-bank had given financial advances to the respondent-company, Vedson Engineers Pvt. Ltd. As the respondent-company failed to pay its debts to the bank, the account became irregular and the bank filed a suit for the recovery of the aforesaid amount, which was decreed by the court of competent jurisdiction vide judgment and decree dated February 28, 1990. The said judgment is stated to have become final between the parties. Thus, the need for filing the execution petition, which was transferred and now is pending before the Debt Recovery Tribunal at Jaipur, under the provisions of Recovery of Debts Due to the Banks and Financial Institutions Act, 1993.

3. On May 22, 1996, the respondent-company was ordered to be wound up by the order of the company court passed in C.P. No. 27 of 1983. The official liquidator attached to this court was appointed as official liquidator of that

respondent-company.

4. The applicant-bank is a secured creditor and has charge on land, buildings, plant, machinery and other fixed assets of respondent No. 1. Thus, the need for filing the present application.

5. The application is not opposed by counsel appearing for the official liquidator. Nobody else has also raised any objection to the grant of the leave prayed for.

6. During the course of hearing it has been brought to the notice of the court that against the order of winding up, passed by this court, SLP (Civil) No. 16297 of 1997 was preferred in the Hon"ble Supreme Court of India, in which the following order was passed

"Leave granted.

Further proceedings in the winding up are stayed.

Learned counsel for the first respondent prays that the matter may be adjourned for one week to enable him to advise his client to proceed only in execution of the decree, giving up the winding up proceedings. If he succeeds in so persuading his clients, an application may be made for appropriate orders."

7. It is clear from the above order that further proceedings in the winding up are stayed. The applicant-bank is a secured creditor and the decree passed by the court of competent jurisdiction has already become final between the parties. The observations of the apex court also indicate that execution proceedings can continue, Learned counsel appearing for the bank has not been able to clarify as to what was the final result of the directions passed by the apex court.

8. In the facts and circumstances of the case, this petition is allowed. The applicant-bank is granted leave to pursue its execution proceedings before the Debt Recovery Tribunal at Jaipur. However, the sale of the assets of the company would be confirmed subject to sanction of the company court. It will be desirable that the bank must pursue the aforestated SLP before the apex court. Needless to say that implementation of this order is subject to the orders that may be passed by their Lordships of the Supreme Court in the aforestated special leave petition. This petition is accordingly disposed of.