

(2000) 03 PAT CK 0093

In the Patna High Court

Case No : Letters Patent Appeal No. 1293 of 1998 in I.A. No. 5077 of 1998 in
Company Petition No. 3 of 1984

Sahu Jain Ltd.

APPELLANT

Vs

Rohtas Industries Ltd. and Others

RESPONDENT

Date of Decision : 24-03-2000

Acts Referred:

Companies (Court) Rules, 1959 — Rule 117

Companies Act, 1956 — Section 446, 446(2)

Constitution of India, 1950 — Article 142, 32

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18

Citation : (2000) 48 BLJR 1260 : (2003) 115 CompCas 997 : (2000) 3 PLJR 100

Hon'ble Judges : Bisheshwar Prasad Singh, J; Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : K.D. Chatterjee and Subhro Sanyal, for the Appellant; S.K. Sindha and Kishore Kumar Sinha for respondent bank, for the Respondent

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—This appeal is directed against the judgment and order dated October 30, 1998, passed by the company judge by which his Lordship refused to recall the earlier order dated August 22, 1997, granting leave to both the respondents banks, namely, State Bank of India (hereinafter called the S. B. I.) and the United Bank of India (hereinafter called the U. B. I.) to proceed with their suits before the Debt Recovery Tribunal. The suits being Suit No. 793 of 1984 and Suit No. 627 of 1985 respectively were filed by the S. B. I. and U. B. I. before the Calcutta High Court against Rohtas Industries Ltd. (in liquidation) (hereinafter called the said company). Those suits were previously transferred before the Debt Recovery Tribunal, Calcutta (hereinafter called the said Tribunal) and on such transfer those suits were re-numbered as T. A. No. 256 of 1996 and T. A. No. 45 of 1996 respectively.

2. Certain facts, which are relevant to the issue, are noted below :

In 1984, one Ajit Kumar Kasliwal filed a winding up petition against the said company in the Patna High Court and it was numbered as Company Petition No. 3 of 1984.

Prior to the initiation of the winding up proceeding, both the S. B. I. and U. B. I. had granted certain credit facilities to the said company and as the said company failed to repay its dues the aforesaid two banks had filed two separate suits for recovery of their amount allegedly outstanding. Sahu Jain Ltd., the guarantor of the said company and the appellant herein has been made a defendant in both the suits.

3. By an order dated May 22, 1986, the company court passed an order directing winding up of the said company.

4. When the winding up proceeding was pending before the company court, the workmen of the said company filed a writ petition under Article 32 of the Constitution of India before the Supreme Court of India and the said petition was numbered as Writ Petition (C) No. 5222 of 1985. In the said petition by an order dated October 24, 1989, the Supreme Court stayed the winding up order dated May 22, 1986, passed by the company court and directed the State of Bihar to appoint an authorised officer from the senior I. A. S. cadre as an administrator of the said company. The Supreme Court also directed the administrator to set up a committee to examine the claims of various parties including the banks and financial institutions.

5. Pursuant to the aforesaid order a Committee was set up consisting of a retired High Court judge and a retired District Judge nominated by the hon"ble Chief Justice of the Patna High Court. The said claim committee issued notice and invited claims and it is averred by the appellant in the petition before this court that the S. B. I. filed its claim before the committee on April 7, 1990. It is also averred that the entire claim made by the bank in the suit was covered in the said claim petition. U. B. I. also filed its claim before the said claim committee which also included the entire claim of U. B. I. in its suit. It is further stated that the claim committee considering the claims of S. B. I. and U. B. I. and others submitted its report in the pending writ petition before the Supreme Court. Before the Supreme Court, the S. B. I. also filed an objection petition to the said report of the claim committee and thereafter in October, 1992, the S. B. I. filed a petition before the Supreme Court seeking a direction upon the Commissioner of Payments to make certain payment to the S. B. I. It is also averred that the S. B. I. also filed certain affidavit before the Supreme Court.

6. The Supreme Court while entertaining an application by the workers made an attempt to revive the said company but ultimately the Supreme Court found that it was difficult to revive the said company and thus passed a final order on October 18, 1995, disposing of the writ petition filed under Article 32 of the Constitution and also the interlocutory proceeding as well as the applications filed by the S. B. I. and U. B. I. with a direction that the winding up proceeding

of the said company may be resumed by the company judge of the Patna High Court.

7. Thereafter applications were filed by the S. B. I. and U. B. I. u/s 446 of the Companies Act, 1956, before the company judge in this Company Petition No. 3 of 1984 for obtaining leave for proceeding with the aforesaid suits being T.A. No. 256 of 1996 and T. A. No. 45 of 1996 before the said Tribunal and the hon'ble company judge by an order dated August 22, 1997, gave leave to the banks in question for proceeding with T. A. No. 256 of 1996 and T. A; No. 45 of 1996 before the said Tribunal at Calcutta.

8. It is an admitted position that the said leave was obtained by the banks without any notice to the appellant.

9. It is further stated that the S. B. I. filed an application before the said Tribunal at Calcutta for proceeding with T. A. No. 256 of 1996 and the appellant filed an affidavit-in-opposition to the said application, inter alia, contending that the said Tribunal has no jurisdiction in the matter. The said Tribunal by an order dated March 4, 1998, rejected the objection of the appellant in view of the order passed by the learned company judge of this court dated August 22, 1997. Against the said order dated March 4, 1998, passed by the said Tribunal, the appellant filed a revision application before the Calcutta High Court and the Calcutta High Court by an order dated April 22, 1998, dismissed the said revision application of the appellant in view of the order of the company judge of the Patna High Court.

10. In the background of these facts, the appellant filed an application on May 2, 1998, in Company Petition No. 3 of 1984 before the company judge of the Patna High Court with a prayer for recalling the said order dated August 22, 1997. One of the main contentions raised by the appellant in such recalling petition is that the leave was obtained by the banks in question without disclosure of all the facts. However, by an order dated October 30, 1998, the company judge rejected the application filed by the appellant for the reasons stated in the order. In connection with the proceeding before the company judge it appears that a counter affidavit was filed by the S. B. I. In the said counter affidavit the stand taken is that the order dated August 22, 1997, whereby leave was granted to the S. B. I. was passed after hearing the official liquidator of the said company. It has been further stated that the appellant, as a guarantor of the said company, has no locus standi to file an application for revocation of leave which was granted after hearing the official liquidator. But it was admitted in the counter affidavit that the suits were filed both against the said company as well as the guarantor, namely, the appellant and it was also stated that the liability of the guarantor being joint and several with the borrower, the bank has a right to proceed against the guarantor in order to recover the outstanding dues against the borrower. It was further stated in the counter affidavit that the Supreme Court while considering the application under Article 32 of the Constitution, by an order dated October 2, 1989, granted a moratorium for one year in respect of

proceeding pending against the company or to be taken against the company and the said period of moratorium was lastly extended till December 31, 1995.

11. It does not appear that any counter affidavit was filed by the U. B. I. before the hon''ble company judge.

12. In the first order which was passed by the company judge on August 22, 1997, granting leave, the learned company judge proceeded, inter alia, on the basis that both the U. B. I. and S. B. I. are secured creditors and as secured creditors they are out of the liquidation proceedings. Therefore, on consideration of that fact, leave was granted to both the banks to proceed with their suits before the said Tribunal on the condition that the official liquidator was allowed to represent the said company in the suit and the assets of the said company will not be sold without permission of the company court, in the event the suits are decreed in favour of the banks.

13. The order of the learned company judge dated October 30, 1998, was far more detailed whereby his Lordship held that there is no justification for recalling the earlier order dated August 22, 1997.

14. Assailing the order dated October 30, 1998, of the learned company judge, learned counsel for the appellant raised the following broad points :

(i) The judgment and order dated October 30, 1998, passed by the learned company judge refusing to recall the order granting leave has been passed without proper appreciation of the peculiar facts of this winding up proceeding in which the Supreme Court "intervened" on the basis of a writ petition filed by the workers and while disposing of the said writ petition, the Supreme Court gave certain directions as a result of which the learned company judge should have proceeded to adjudicate the bank's claim in the suits in this winding up proceeding itself.

(ii) On a harmonious construction of the provisions of the Companies Act, 1956 (hereinafter called the said Act) and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter called the RDBFI Act) and also the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter called the SICA), the company court has jurisdiction in the winding up proceeding itself to deal with the claims of the banks.

(iii) In the instant case leave was given to the banks to proceed with the suit before the Tribunal admittedly without hearing the appellant and as such the said order is bad in law and on that ground alone the leave should have been revoked.

(iv) In view of the fact that in the banks' suits, the appellant has been impleaded as defendant, it has sufficient locus standi to ask for revocation of the leave and for adjudication of the claims of the banks against it in the winding up proceeding itself.

15. Learned counsel for the S. B. I. submitted that out of these two Acts,

namely, the Companies Act and RDBFI Act, the RDBFI Act being a later one the same will prevail. Learned counsel further submitted that the appellant being merely a guarantor has no locus standi to file an application for revocation of the leave which was granted after hearing the official liquidator who represented the company. Learned counsel for the bank has relied upon Section 129 of the Contract Act, 1872, in order to show that the liability of the surety is co-extensive with that of the principal unless it is otherwise provided in a contract. Learned counsel also relied on Section 17 of the RDBFI Act and contended that on and from the appointed date, the Tribunal shall exercise the jurisdiction, power and authority to entertain and decide applications from banks and financial institutions for recovery of debts due to such banks and financial institutions, and he further relied on the provisions of Section 18 of the said RDBFI Act in order to contend that on and from the appointed date, no court or authority shall have or be entitled to exercise any jurisdiction or authority except the Supreme Court or the High Court under Articles 226 and 227 of the Constitution in relation to the matters specified in Section 17.

16. Relying on those provisions, learned counsel argued that the order of the learned company judge is valid.

17. Learned counsel appearing for the official liquidator virtually argued on the same lines as learned counsel for the bank and supported the order of the learned company judge. Learned counsel further submitted that the appellant has no locus standi to file application for revocation of the leave and that the provisions of the Companies Act and those of the RDBFI Act are not in conflict with each other but they operate in different fields.

18. These being the rival contentions, this court proposes to examine each of them separately.

19. Before proceeding to deal with the rival contention this court proposed to note the findings made by the learned company judge in his Lordship's order dated October 30, 1998, against which the instant appeal is directed.

20. From the facts narrated by the learned judge in the said order, it appears that in the order of the Supreme Court dated October 18, 1995, disposing of the writ petition under Article 32 of the Constitution, a direction was given for resumption of the winding up proceedings by the learned company judge of the Patna High Court. Pursuant to that direction, the company judge passed on November 24, 1995, the winding up order in respect of the said company and the official liquidator was appointed. It also appears that the attempts to revive the said company failed and were set at rest on May 23, 1997. Noting these facts, the learned company judge considered the order of the Supreme Court dated October 18, 1995, by which, according to the learned judge, dual responsibility has been cast upon the company court, namely, to resume the winding up proceeding and also to explore the possibility of revival of the said company in the light of the offers that were received along with any other offer

which may be received. The learned judge further held that after it gave up the efforts of revival, the report of the claims committee lost its significance in view of the establishment of the Debts Recovery Tribunal under the provisions of the RDBFI Act. The learned judge held, inter alia :

(a) The said RDBFI Act confers exclusive jurisdiction under Sections 17 and 18 thereof and excludes the jurisdiction of any other court except that of the Supreme Court and the High Court (only jurisdiction under Articles 226 and 227 of the Constitution). The learned judge further held that Section 34 of the RDBFI Act has an overriding effect and Section 31 thereof provides for transfer of pending cases to the said Tribunal.

(b) The learned judge, on a conjoint reading of the provisions of Sections 17, 18 and 34 of the RDBFI Act held that it is no longer necessary to apply for leave in terms of Section 446(1) of the said Act nor is it open to the company court to transfer a suit to itself for trial in the winding up proceeding in terms of Section 446(2) of the said Act.

(c) The learned judge further held that application for leave was disposed of by him by an order dated August 22, 1997, without noticing the provisions of RDBFI Act and if the provisions were noted the order would have been "in a different form".

(d) About the order of the Supreme Court, the learned company judge held that it did not take into consideration the provisions of the RDBFI Act presumably because the Tribunals were not established by that time. The learned judge, however, held that the direction of the Supreme Court to consider the report of the claim committee does not override "the express mandatory provisions" of the RDBFI Act.

21. On the basis of the aforesaid finding the learned company judge dismissed the petition filed by the appellant.

22. This court first takes up the question of locus of the appellant since that is the point mainly argued before this court by learned counsel for the banks and the official liquidator and since that goes to the root of the matter. Factually, this court finds that the appellant has been impleaded in the suits filed by the banks and decree has also been prayed for against the appellant by the banks. Therefore, the appellant has a right to take a defence in the suits. Since the appellant has a, right to defend the suit, the appellant has also a right to raise objection and be heard in support thereof in connection with any question about deciding the issue of forum in which the claim against the appellant by the bank ought to be adjudicated. It is well known that the guarantor's contract can be invoked when the claims against the principal, debtor fail.

23. Against the background of these facts, it is difficult for this court to hold that the appellant has no locus standi to file the instant proceeding for revocation of leave which was granted by the learned company judge without hearing the

appellant.

24. The next question which is inextricably linked up with the question of locus is whether the appellant has a right of being heard when leave has been applied for by the banks from the company judge.

25. In this connection, reference may be made to Rule 117 of the Companies (Court) Rules, 1959. Rule 117 has been framed in connection with the application for leave u/s 446 of the said Act. The said rule is set out below :

"An application u/s 446(1) for leave of the court to commence or continue any suit or proceeding against the company shall be made upon notice to the official liquidator and the parties to the suit or proceeding sought to be commenced or continued."

26. It is clear from a plain reading of the rule that for obtaining the leave u/s 446 of the Act, notice must be given, inter alia, to the official liquidator and also to the "parties to the suit". The appellant being admittedly one of the main defendants in the suit is entitled to notice under the provisions of the said rule.

27. In Palmer's Company Law, 23rd edition, it is very clearly stated "the leave must not be given on an ex parte application." (page 1187, para. 85-77).

28. Here is a statutory requirement of notice upon the appellant in a proceeding for grant of leave, so it is obvious that the Legislature recognises the right of all the parties to the suit or proceeding to be heard at the time when prayer for leave is made.

29. Since the appellant has a statutory right to get a notice and has not admittedly got any notice when leave was granted by the company judge u/s 446 of the said Act, it has sufficient locus to complain against such grant of leave and which has been done by way of infraction of his statutory right. So he can legitimately file a petition before the company judge to revoke the leave.

30. Over the years, there has been a considerable expansion of the principles of natural justice on the basis of various judicial dicta. Even in areas where there is no express statutory requirement of hearing, the courts have, consistent with the concept of fairness and fair play in action in any judicial, quasi judicial or administrative decision making, insisted on the requirement of hearing and observing the principles of natural justice. The courts have insisted on these requirements to such an extent as to hold that the principles of natural justice are an in-built content of Article 14 (Kindly see the judgment of the Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, and also at page 196 paragraph 262 as also the judgment of the apex court in the case of Cantonment Board Dinapur v. Taramuni Devi AIR 1992 SC 61 (see paragraph 5).

31. In the instant case, there is an express statutory requirement of hearing and admittedly the appellant has not been heard while leave was granted. Therefore,

the initial order of the learned company judge which was passed ignoring this statutory mandate suffers from an infirmity and the appellant has sufficient locus to complain against the same.

32. On a reference to the provisions of Section 446 of the said Act, this court finds that Sub-section (2) of Section 446 of the said Act also starts with a non obstante clause and as a result of the said clause, Section 446(2) of the said Act has been given an overriding effect over any other law for the time being in force but the learned company judge has, in view of the provisions of Section 34 of the RDBFI Act has held that Sections 17 and 18 of that Act will have an overriding effect over Section 446(2) of the said Act.

33. The ambit and purport of Section 446 of the said Act has been considered in the context of the object and scope of RDDBFI Act by the Supreme Court in the case of Industrial Credit and Investment Corporation of India Ltd. Vs. Srinivas Agencies and Others, . In the impugned judgment the learned judge has just noted the said case but unfortunately has not discussed the principles laid down in the said judgment in Industrial Credit and Investment Corporation of India Ltd. Vs. Srinivas Agencies and Others, .

34. While construing various provisions of the said Act and specially Section 446(2) thereof the learned judges of the Supreme Court in Industrial Credit and Investment Corporation of India Ltd. Vs. Srinivas Agencies and Others, came to the following conclusions :

"A combined reading of the aforesaid provisions leads to the following results :

(i) A winding up court has jurisdiction, inter alia, to entertain or dispose of any suit or proceeding by or against the company, even if such suit or proceeding had been instituted before an order for winding up had been made. This apart, the winding up court has jurisdiction to transfer such a suit or proceeding to itself and dispose of the same. These follow from Sub-sections (2) and (3) of Section 446.

(ii) When a winding up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding, even if pending at the date of the winding up order, can proceed against the company, except by leave of the company court vide Sub-section (1) of Section 446.

(iii) Any sale held, even without the leave of the winding up court pursuant to order of a civil court on it being approached by a secured creditor to realise its debt will not ipso facto be void, in view of the holding in Ranganathan case that Section 537, dealing with voidness of sale, operates when the sale is pursuant to attachment of company court. This, however, would be the position where a company has not been wound up, but is in the process of being wound up."

35. After arriving at the aforesaid conclusion the learned judges summed up the controversy in paragraph 5 of the judgment as follows (page 260) :

"The real bone of contention is as to when (i) leave of the winding up court should be granted to a secured creditor to proceed with the suit after an order of winding up has been made; and (ii) when should a winding up court transfer to itself any suit or proceeding by or against the company during the pendency of the winding up proceeding."

36. Here also we are virtually faced with almost identical questions.

37. In answering those questions, the Supreme Court traced the "historical evolution and present setting" of Section 446(2) of the said Act in paragraph 8 of the said judgment.

38. The learned judges of the apex court also took note of the provisions of Sections 17 and 18 of the RDBFI Act in paragraph 10 of the judgment. Even after noticing the provisions of Sections 17 and 18 of the RDBFI Act, the learned judges of the honorable apex court did not hold that provisions of RDBFI Act bring about a total and automatic ouster of the jurisdiction of the company court u/s 446(2) of the said Act, but held that the company court will have to exercise its jurisdiction depending on the facts of each case and there cannot be any strait-jacket formula. The principles have been succinctly put in paragraph 13 of the judgment and which are quoted below (page 264) :

"We are, therefore, of the view that the approach to be adopted in this regard by the company court does not deserve to be put in a strait-jacket formula. The discretion to be exercised in this regard has to depend on the facts and circumstances of each case. While exercising this power we have no doubt that the company court would also bear in mind the rationale behind the enactment of Recovery of Debts Due to the Banks and Financial Institutions Act, 1993, to which reference has been made above. We make the same observation regarding the terms which a company court should like to impose while granting leave. It need not be stated that the terms to be imposed have to be reasonable, which would, of course, vary from case to case. According to us, such an approach, would maintain the integrity of that secured creditor who had approached the civil court or desires to do so, and would take care of the interest of other secured creditors as well which the company court is duty-bound to do. The company court shall also apprise itself about the fact whether dues of workmen are outstanding; if so, extent of the same. It would be seen whether after the assets of the company are allowed to be used to satisfy the debt of the secured creditor, it would be possible to satisfy the workmen's dues *pari passu*."

39. In view of the principles laid down in Industrial Credit and Investment Corporation of India Ltd. Vs. Srinivas Agencies and Others, this court cannot uphold the reasons given by the learned company judge that as a result of the provisions of RDBFI Act the company court's jurisdiction u/s 446(2) of the said Act has been automatically ousted. The judgment of the Supreme Court is obviously not to that effect.

40. The judgment of the Supreme Court, as discussed above, would show that

the company judge will have to decide the question of grant of leave on the facts and circumstances of each case and must take into account various factors and consideration discussed above. There can be no strait-jacket formula but unfortunately the approach of the learned company judge has been just like that. The finding of the learned company judge that in view of the provisions of the RDBFI Act no application, even for leave, is necessary cannot be sustained in view of the reasons given in Industrial Credit and Investment Corporation of India Ltd. Vs. Srinivas Agencies and Others, . Therefore, the learned company court should not have acted as if his Lordship's jurisdiction u/s 446(2) of the said Act has been frozen just because of the provisions of Sections 17, 18, 31 and 34 of the RDBFI Act. It is a well settled principle of construction that ouster of court's jurisdiction is not to be readily inferred.

41. For the reasons aforesaid this court, with great respect to the learned company judge, cannot affirm his Lordship's views that in view of provisions of the RDBFI Act even no application for leave is necessary and the suits are automatically transferred to the Tribunal.

42. This court also, with respect, cannot sustain the view taken by the learned company judge about the directions of the Supreme Court in connection with the present winding up proceeding. Those directions are contained in the reported judgment in the case of Workmen of M/s. Rohtas Industries Vs. Rohtas Industries and others, .

43. From a perusal of the said judgment it appears that the hon''ble Supreme Court has issued various directions in the said judgment and obviously those directions were aimed at an attempt by the hon''ble Supreme Court to revive the said company but when the said attempt did not materialise it was only after on the order of the Supreme Court in that judgment that winding up proceeding before the company judge of the Patna High Court was resumed. It is also a fact that when the Supreme Court was in seisin of the matter it stayed the winding up proceeding and granted a moratorium till December 31, 1995, but ultimately the Supreme Court put an end to those proceedings before it by permitting the resumption of this very winding up proceeding in Company Petition No. 3 of 1984 and while doing so the Supreme Court issued certain directions out of which direction No. 8 is as follows :

"8. The report of the claims committee on the claims of the financial institutions, creditors and the workers will be considered by the company judge in the light of the objections that have been submitted against the said report."

44. Apart from that, the Supreme Court also issued the following direction :

"It will be open to the Rehabilitation Commissioner and the official liquidator to seek further directions from this court with regard to any matter pertaining to the period this writ petition was pending in this court."

45. These directions by the Supreme Court are binding on the company judge,

but the learned company judge has unfortunately assumed that those directions have been given by the Supreme Court without consideration of the relevant provisions of the Debt Recovery Act and his Lordship observed "perhaps it appears to me that the Debt Recovery Tribunal had not been established by that time, and, therefore, there was no occasion for the court to consider the same."

46. This court is humbly of the opinion that there is no warrant for these assumptions inasmuch as the RDBFI Act, as an Act of 1993 must have been on the statute book much before October 18, 1995, when the said judgment was delivered. Apart from that the finding of the learned company judge that the direction of the Supreme Court upon the learned company judge to consider the report of the claims committee cannot override the mandatory provisions of the RDBFI Act also cannot be sustained.

47. Reference in this connection may be made to Section 18 of the RDBFI Act and the provisions are set out below :

"18. Bar of jurisdiction--On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17."

48. Therefore, when the Supreme Court in exercise of its jurisdiction under Article 32 and possibly also under Article 142 of the Constitution passes positive directions on the company court, those directions are binding on the company court and must be considered by the company judge. The provisions of Section 18 of the RDBFI Act expressly save the jurisdiction of the Supreme Court in its entirety. It is common ground that while passing the impugned order, the company judge was considering the matter specified in Section 17 of the RDBFI Act.

49. In the context of these statutory provisions, the company judge's order to the contrary cannot be sustained.

50. One aspect was noticed by this court. The impugned order of the learned company judge dated October 30, 1998, is appealable u/s 483 of the said Act. But the appellant has filed this appeal as a letters patent appeal. Since no objection has been taken on that score by the respondents, this court is not called upon to decide that issue and specially when the said objection is technical in nature.

51. Therefore, considering the matters from all possible angles this court cannot sustain the impugned order dated October 30, 1998, passed by the learned company judge. The said order is hereby set aside.

52. This court, therefore, remits the matter to the learned company judge for hearing the application of the appellant for revocation of leave afresh in the light of the observations made in this judgment and also in accordance with the law

laid down in Industrial Credit and Investment Corporation of India Ltd. Vs. Srinivas Agencies and Others, which have been discussed above. This appeal thus succeeds. There will be no order as to costs.

B.P. Singh, J.

I agree.