

(2004) 12 DEL CK 0029

In the Delhi High Court

Case No : CA 1380 of 1998 and 1834 of 2000

Shankar Lal Saraf

APPELLANT

Vs

CRB Capital Markets Ltd. and Others
 Citizens Co-
Operative Bank Ltd. Vs Shankar Lal Saraf

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Companies Act, 1956 — Section 450, 531
Reserve Bank of India (Amendment) Act, 1997 — Section 45MB
Reserve Bank of India Act, 1934 — Section 45MC1(d)

Citation : (2004) 12 DEL CK 0029

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : M.N. Krishnamani, Rajiv Bahl, Abhijit Sengupta, Sachin Das and Anand, in CA No. 1380/1998 and B.S. Shukla, in CA No. 1834/200, for the Appellant; Sudhanshu Batra, Bhuvan Guinai, M.D. Kanthur, Amit Dayal, for SIDBI, Thampi Mathur, for IDBI, S.K. Luthra, for the old in CA No. 1380/1998 and M.N. Krishnamani Rajiv Bahl, Abhijit Sengupta, Sachin Das and Anand, in CA No. 1834/2000, for the Respondent

Judgement

A.K. Sikri, J.—Reserve Bank of India (RBI), as the petitioner, filed C.P.191/97 u/s 45MC1(d) of the Reserve Bank of India Act for winding up of CRB Capital Markets Ltd (hereinafter called 'the company'). Along with this petition, RBI also moved CA.552/97 for appointment of the Provisional Liquidator u/s 450 of the Companies Act, 1956 (for short 'the Act'). This petition came up for hearing on 22.5.1997 when the Court appointed the Official Liquidator attached to this Court as the Provisional Liquidator with direction to him to take into his control and custody all the assets, properties and books of accounts of the company. Since then the Official Liquidator is controlling the affairs of the company. However, it may also be mentioned at this stage that the ex-Director of the company has submitted the application for revival of the company in which orders were passed on 22.3.2002 directing to convene meetings of secured creditors, unsecured creditors and share holders. These proceedings in the company petition are

pending. The Scheme for Revival has not yet been approved. However, many creditors have come forward who have lodged their claims.

2. Mr.Shankar Lal Saraf is one such person who has filed CA No. 1380/1998. However, he is not demanding any money as a creditor which in any case he can not do at this stage.

3. His case is that pursuant to the short term loan given by him for a total amount of Rs. 16,25,00,000/-, he purchased on 20th February, 1997 sixty one SIDBI Bonds issued by Small Industries Development Bank of India Ltd. (respondent No. 3), from M/s CRB Capital Markets Limited (hereinafter referred to as 'the company') and on purchase of these Bonds, part of the short term loan given by him to the company got adjusted. Some more SIDBI Bonds were purchased on 7th April, 1997 adjusting further loan given to the company. In February, 1997, the applicant also purchased seven pieces of IDBI Bonds issued by the Industrial Development Bank of India (respondent No. 4) from the company after adjusting the loan already advanced. Thus, according to the applicant, he has become owner of these SIDBI and IDBI Bonds which were duly lodged with the respondents 3 and 4 with request to pay interest. However, these respondents are refusing to pay this interest. Not only this, some of these Bonds were sold to some other persons and request was made to the respondents 3 and 4 to register the transfer in their names and even that request is not acceded to. The relief which is, thus, claimed in this application is couched in the following manner :

"(a) permit the Small Scale Industry Development Bank of India Ltd., respondent No. 3 to give interest due and payable to the petitioner with respect to 25 SIDBI Bonds issued by it and duly registered in the name of the petitioner;

(b) permit the respondent No. 3 to register transfer of 41 Bonds made by the petitioner in favor of the purchaser namely M/s SIBCO Investment (P) Ltd. or their nominees with interest;

(c) permit Industrial Development Bank of India, respondent No. 4 to give interest due and payable to the petitioner for the 6 IDBI Bonds issued by it and duly registered in the name of the petitioner;

(d) permit the Industrial Development Bank of India, respondent No. 3 to give principal amount along with interest due and payable to the petitioner for the 2 bonds which have matured and which are duly registered in the name of the petitioner;

(e) permit the respondent No. 4 to register the transfer of six IDBI Bonds made by the petitioner in favor of the purchaser, namely, M/s K.P.C. Securities (P) Ltd.or their nominee;

(f) pass such order or further order to which this Hon''ble Court may deem fit and proper on the facts and circumstances of this case."

4. In so far as details of money advanced by way of short term loans by the applicant to the company are concerned, these are as under:

LOANS	ADVANCED TO	RESPONDENT	DATE	AMOUNT	OF
			No.		1
			19/2/96		Rs.
2,50,00,000	26/2/96	Rs. 3,75,00,000	20/3/96	Rs. 2,00,00,000	4/4/96
2,50,00,000		6/7/96		Rs.	5,50,00,000
					TOTAL
Rs.16,25,00,000					

5. The Bonds of the respondents 3 and 4 which were purchased from the company have following particulars:

(i) Sixty one SIDBI Bonds on 20th February, 1997 for a total consideration of Rs. 2,69,50,000/-.

(ii) Five SIDBI Bonds on 7th April, 1997 for a total consideration of Rs. 35,00,000/-. The face value of these sixty six SIDBI bonds was Rs. 4,35,00,000/- as per the details given in para 3 of the application.

(iii) Seven pieces of IDBI Bonds on 20th February, 1997 for a total consideration of Rs. 59,50,000/-.

(iv) One piece of IDBI Bond on 7th April, 1997 for a total consideration of Rs. 8 lacs. The face value of these eight IDBI Bonds is Rs. 95 lacs and particulars thereof are given in para 10 of the application.

6. According to the applicant, the aforesaid sixty six SIDBI as well as eight IDBI Bonds were deposited with the respondents 3 and 4 respectively before the cut off date prescribed by the Reserve Bank of India (RBI) and they were duly registered by the respondents 3 and 4 in the name of the applicant. According to the applicant, on the registration of these Bonds in favor of the applicant, he became actual owner of these Bonds. Some of these Bonds, as mentioned above, were further sold by the applicant to other parties, particulars whereof are mentioned in prayer clause as well reproduced above. However, the respondents 3 and 4 have neither paid interest nor transferred the Bonds to the subsequent purchasers. The reason is filing of the company petition by the RBI in this court and order dated 22nd May, 1997 passed by this court appointing the Official Liquidator as the Provisional Liquidator.

7. To complete the sequence of events, it may be mentioned that the RBI issued a Notification dated 10.4.1997 u/s 45 MB of the RBI (Amendment) Act, 1997 thereby directing the company not to sell, transfer, create charge or mortgage or deal in any manner with any of its properties and assets without the permission of the Bank for a period of six months from the date of said notification. Thereafter company petition was filed which came up for hearing on 22nd May, 1997 and on the very first date the Provisional Liquidator was appointed.

8. The advancement of the short term loan by the applicant to the company is not in dispute. It appears that this loan was advanced by the applicant against the Bonds. The applicant has placed on record letter dated 17th September, 1996 written by the company to the applicant which is in respect of Rs. 200 lacs and Bonds are given by way of security. It would be useful to reproduce this letter:

""With reference to the above and with reference to our letter dated 19th March" 96, we request you to kindly extend our loan of Rs. 200 lacs against bonds on the following terms and conditions:

PERIOD : 3 Months RATE OF INTEREST : 40% per annum SECURITY WORTH : Rs. 300 lacs to be kept as margin.

We authorise you to keep the bonds lying with you against our previous loan of Rs. 200 lacs which is due on 19th September" 96.

We enclose herewith a cheque No. 954194 and cheque No. 954193 dated 19th December "96 and 19th September"96 drawn on Canara Bank, Sarat Bose Road branch, for Rs. 2,00,00,000/- and Rs. 20,00,000/- against principal and interest thereon.

In case of dishonour of any of the cheques mentioned above you are authorised to dispose of the bonds and realise the amount due to you. You are also requested to kindly return our PDC dated 19.9.96 for Rs. 2,00,00,000/-.

Our File No. is 23-065-CT-9014 ----- ITO CO W (1(1) ND"

9. Identical letters are written in respect of other short term loans. It is clear that for repayment of this loan not only the company gave two post dated cheques representing principal amount and interest for refund of the loan on due date, the loan was further secured against Bonds and it was stated that in case the cheques are dishonoured, the applicant would be entitled to dispose of the Bonds. It is also clear that when on due dates, the company was not in a position to repay the loan, it requested the applicant to return the cheques and instead get the Bonds redeemed in his favor. Letter dated 28th January, 1997 addressed by the company to the applicant in respect of IDBI Bonds clearly authorises the applicant to adopt such a course of action by, inter alia, mentioning:

"In view of the above, you are requested to kindly send the bond for redemption in your favor at the earliest and realise the amount of principal along with interest due on the bonds in our favor.

You are requested to kindly adjust our loan of Rs. 200 lacs and pay us the balance amount on the date of receipt.

Further, we request you to keep the balance securities of Rs. 80 lacs in the form of bonds against other loans due to you."

10. The cheques were thereafter returned. Same was the course of action adopted in redeeming other Bonds which were purchased in February and April.

Thus although at the time of advancing loan the Bonds were given by way of security and the post dated cheques for refund of loan were given, but much before the maturity date of the cheques, this chartered course was altered. Cheques were taken back and the Bonds were transferred in the name of the applicant, which was hitherto a security only.

11. It would be clear from the aforesaid nature of the transaction that the applicant became owner of these Bonds much before passing of order of appointment of the Provisional Liquidator nay, much before even the RBI's Notification dated 10th April, 1997. I have dealt with this aspect in detail in CA (M) No. 21/2002 and CA No. 1156/2003 entitled 'M/s Morepen Finance Limited v. Reserve Bank of India' which was disposed of vide judgment dated 31st August, 2004 In that case relating to transfer of Bond by the same company, after analyzing the provisions of the Negotiable Instruments Act, I held that the holder of the Bonds had become owner thereof by operation of law. Present case of the applicant is even on a better footing. In the instant case, not only the applicant was holding the Bonds even these Bonds were duly transferred in his name by the respondents 3 and 4 when he lodged the same with them. This was on the basis of authorisation by the company as short term loan had become due and instead of encashing the post dated cheques which were given in advance, the company requested the applicant to redeem the security and on this authorisation the applicant acted and got the Bonds transferred in his name. The applicant has also placed on record the letters written by him to the company about the said redemption and also returned post dated cheques which were given at the time of advance of short term loan by stating 'since you have already repaid the loan by way of redemption of Bond'.

12. The respondents tried to argue that it could be a fraudulent preference u/s 531 of the Act. This argument was also negated by me in the aforesaid judgment dated 31st August, 2004 In the present case, no statement of law even is required. Here the transaction stood concluded much before the filing of winding up petition. There cannot, Therefore, be any question of fraudulent preference as transfer of the shares was for repayment of the loan which was admittedly a genuine transaction between the parties. In any case, the legal position is also explained by me in detail in the aforesaid order. After reproducing law on this aspect, it was observed in the case of M/s Morepone Finance Limited (supra) as under:

"Keeping in view the aforesaid principals in mind, it cannot be said that transaction in question would amount to 'fraudulent preference'. Transaction is of a date before even winding up petition was filed. Further valuable consideration is proved as he applicant advanced loan in the form of ICD in consideration whereof the Bond in question was endorsed. Therefore, good faith in the transaction follows and there is not even a suggestion either by the Official Liquidator or the ex-Director or RBI which could shake this presumption, what to talk of any cogent evidence establishing want of good faith. It was a

contemporaneous act. It was not a case where ICD was given much earlier and the applicant was subsequently, to secure that loan, given the Bon. The report of the Court Commissioner, to which reference has already been made, has found the transaction to be genuine. Therefore, it cannot be termed as a 'fraudulent preference'."

13. Learned counsel for the respondents had also submitted that the total loan given by the applicant to the company was Rs. 16,25,00,000/- and complete account was not given as to how the amount was adjusted. Thus on 18th August, 2004 an order was passed directing the applicant to file a complete statement of account in respect of loan of Rs. 16,25,00,000/- given by the applicant to the company and in what manner the adjustments were made by appropriating shares, securities and bonds etc. This statement has been filed and after going through the same, I am satisfied that as far as transfer of aforesaid Bonds is concerned, it was for repayment of loan advanced by the applicant to the company.

14. This application is accordingly allowed. The respondents 3 and 4 shall pay the interest payable on these Bonds to the applicant till the time the applicant was owner of these Bonds. Since the applicant became owner of these Bonds, he had right to transfer of those Bonds also. Therefore, transfer sought by the applicant in the name of other parties shall also be carried out by the respondents 3 and 4 in favor of the subsequent purchasers, as mentioned in the prayer clause. CA No. 1834 OF 2000

15. This application is filed by Citizen Co-operative Bank Limited stating that it has purchased certain Bonds from Mr. Shankar Lal Saraf, applicant in CA No. 1380 of 1998. This position is accepted by Mr. Shankar Lal Saraf. Since it is held that Mr. Shankar Lal Saraf had become owner of these Bonds before the provisional winding up orders passed, Therefore, he had right to sell these Bonds also. Therefore, the prayer made in this application stands allowed and it is already directed while disposing of C.No. 1380 of 1998 that such subsequent purchasers shall get the Bonds transferred in their names which they have purchased. The applicant in this case shall also get the same treatment.

16. This application is also disposed of.