
(1987) 06 BOM CK 0019
In the Bombay High Court

State Bank of India

APPELLANT

Vs

Edward Textile Mills. and another

RESPONDENT

Date of Decision : 26-06-1987

Acts Referred:

Sick Textile Undertakings (Nationalisation) Act, 1974 — Section 20, 5, 8

Citation : (1987) 06 BOM CK 0019

Hon'ble Judges : Sujata V. Manohar, J

Bench : Single Bench

Advocate : Virag V. Tulzapurkar, for the Appellant; Virag V. Tulzapurkar, for the Respondent

Judgement

Mrs. Sujata Manohar, J.—This is an appeal from an order passed by the Assistant Commissioner of Payments under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974.

2. Prior to April 1, 1974, the appellants, State Bank of India, had entered into a cash credit arrangement with Edward Textile Mills Ltd. and had advanced various amounts to Edward Textile Mills Ltd. which were repayable with interest. Under the Sick Textile Undertakings (Nationalisation) Act, 1974, the undertakings, inter alia, of Edward Textile Mills Ltd. was taken over and became vested in the National Textile Corporation with effect from April 1, 1974. u/s 5 of the said Act, "every liability, other than the liability specified in sub-section (2) of the owner of a sick textile undertaking, in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or National Textile Corporation. "Sub-section (2) of section 5 of the said Act is not relevant for the purpose of the present appeal. The "appointed day" referred to in section 5 was April 1, 1974. As a result of this provision, every liability incurred by the owner of a sick textile undertaking prior to April 1, 1974, remained the liability of such owner as was enforceable against him and not against the Central Government or the National Textile Corporation. Sub-section 3 of section 5 made this position abundantly clear by providing that

no liability of this nature shall be enforceable against the Central Government or the National Textile Corporation.

3. u/s 8 of the said Act, "the owner of every sick textile undertaking shall be given by the Central Government, in cash and in the manner specified in Chapter VI, for the transfer to, and vesting in it,... of such sick textile undertaking and the right, title and interest of the owner in relation to such sick textile undertaking, an amount equal to the amount specified against it in the corresponding entry in column (4) of the First Schedule." The amount so payable as compensation to Edward Textile Mills Ltd. was Rs. 66,28,000 (which has now increased to Rs. 72,87,452 with the accrual of interest on it as provided u/s 9, sub-section 2 of the said Act).

4. Under Chapter VI of this Act, a Commissioner of Payments was appointed for the purpose of disbursing the amount payable to the owner of each sick textile undertaking. Under the provisions of section 20, every person having claim against the owner of a sick textile undertaking was required to prefer such claim before the Commission of Payments within 30 days from the specified date. Section 21 read with the Second Schedule laid down priorities for payment of such claims out of the compensation amount. Claims under category 1 in the Second Schedule have precedence over all other categories and category II claims have precedence over category I claims. The claim of the appellants thus fell under category I and had precedence over all the other claims for payment out of the compensation amount.

5. u/s 20 of the said Act, a notification was issued specifying that all claims should be lodged with the Commissioner of Payments within 30 days from April 1, 1977. Accordingly, the appellants lodged their claims with the Commissioner of Payments on April 29, 1977. The appellants filed a total claim of Rs. 64,14,130.51. Out of this, a sum of Rs. 37,29,188 was in respect of the amount outstanding under the cash credit account as on March 31, 1974. This was inclusive of the principal amount advanced and interest calculated as per the agreement between the appellant bank and Edward Textile Mills Ltd. upto March 31, 1974. The appellants claimed a further sum of Rs. 20,73,691 by way of interest under the said cash credit account from April 1, 1974 to March 31, 1977. There were some other claims also which are not material here. The Commissioner has allowed the claim of the appellants for Rs. 37,29,188. He has however, disallowed the appellants' claim for interest from April 1, 1974, to March 31, 1977, on the ground that the liability of the owner of the said sick textile undertaking is determined as on March 31, 1974, and hence no claim can be made against the owner in respect of the payment of interest from April 1, 1974, to March 31, 1977.

6. Section 5 states that every liability of the owner of a sick textile under taking prior to April 1, 1974, shall be the liability of such owner. The liability which is occurred by the owner in the present case is the liability to repay to the appellant bank the amount advanced under the cash credit facility together with interest.

This liability had been incurred prior to April 1, 1974. The liability of the owner, therefore, includes liability to pay interest on the loan amount until such times as the loan is repaid in full. Since the liability is incurred by the owner prior to April 1, 1974, this liability continues to be the liability of the owner and can be discharged from the compensation amount. The Commissioner was, therefore, not right when he said that the liability of the owner to pay interest ceases as from April 1, 1974. There is nothing in the Act which terminates the liability of the owner as from March 31, 1974.

7. The next question is of priority. The Second Schedule, Part A puts in category 1, inter alia, "loans advanced by a bank". This category includes not merely the principal amount lent but also interest in it. The various items in the Second Schedule describe the order of priorities for the discharge of liabilities. This is expressly the heading of the Second Schedule. The liability incurred is of the repayment of loan which includes principal amount and interest. The term "loan" therefore, in category 1 of the Second Schedule, covers both principal amount and interest. In this connection, Mr. Virag V. Tulzapurkar, learned counsel for the appellants, drew my attention to the provisions of section 58(a) of the Transfer of Property Act under which "the principal money and interest of which payment is secured for the time being are called the mortgage money", so that mortgage money includes interest also. He also relied upon the definition of "loan" u/s 2(9) of the Bombay Money Lenders Act, 1946, under which loan is defined as "an advance at interest whether of money or in kind.." He submitted that by analogy, the repayment of the loan advanced by the appellant bank would include repayment of interest also. This submission must be upheld. "Loan" ordinarily covers repayment of both principal amount and interest. In the present case, when sections 5, 21 and the Second Schedule are read together, this becomes even more apparent. The claim of the bank both for principal and interest upto March 31, 1977, falls under category I of the Second Schedule under the heading "Loans advanced by a bank". The bank is, therefore, entitled to claim interest out of the amount deposited with the Commissioner of Payments for disbursement under the provisions of the said Act. The appellants are, therefore, entitled to recover their claim for Rs. 20,73,691 from the compensation amount.

8. Unfortunately, looking to the amount which is allotted to Edward Textile Mills Ltd. under the said Act, nothing remains thereafter for disbursement to other creditors in lower categories of the said mill who had a right to recover their claims from the compensation amount. One such claim in respect of the wages, gratuity and provident fund of the staff and employees of the said mill prior to April 1, 1974, which falls under category III in the Second Schedule. This claim is approximately of the value of Rs. 2,76,000 (as allowed by the Commissioner of Payments). In view of the fact that the claim of other creditors including the staff and workers of the mill. This is a fit case where the appellants may forgo a small part of their claim in favour of the staff and employees. The appellants may, therefore, consider releasing a small part of their claim in favour of the staff and

workers if it is permissible for them to do so in law.

9. The appeal is allowed . No order as to costs in the circumstances of the case.