

(1998) 03 P&H CK 0164
In the Punjab And Haryana At Chandigarh
Case No : C.P. No. 25 of 1998

State Bank of India

APPELLANT

Vs

Northland Sugar Complex Ltd. and others

RESPONDENT

Date of Decision : 05-03-1998

Acts Referred:

COMPANIES ACT, 1956 — Section 446

Citation : (1998) 94 CompCas 382

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Judgement

Swatanter Kumar, J.—This is a petition u/s 446(1) of the Companies Act, 1956, seeking permission to proceed with the original application filed by the petitioner on February 12, 1998, pending before the Debt Recovery Tribunal, Jaipur.

2. The necessary facts are that the State Bank of India, a body corporate, had advanced financial loan/assistance to respondent No. 1, Northland Sugar Complex Limited. The other respondents except respondents Nos. 10 to 13 had executed the documents and guarantee deeds in favour of the bank. The accounts of the respondent-company became irregular as a result of default and as on March 31, 1997, according to the bank, the following amounts are due and recoverable by the bank from respondent No. 1.

-----	"Sl. Nature of
facility Amount outstanding as on 31-3-1997, No. including interest up to 31-3-1997 -----	1.
Term loan 1,16,71,245.55	2. Cash credit 50,03,520.98
-----	1,66,74,776.53
-----	which has now
become Rs. 1,93,23,904.53."	

3. The financial limits were extended at Chandigarh and are payable at Chandigarh, The registered office of the respondent-company is located within

the territorial jurisdiction of this court.

4. As the respondent-company had failed to pay debts of other creditors, the company court in C.P. No. 45 of 1996, had directed, vide order dated October 9, 1997, the company to be wound up. The necessity for seeking such permission, thus, arose for the petitioner-bank u/s 446 of the Companies Act, 1956.

5. Notice of this petition was issued to the respondent-company. None appeared to oppose the petition inspite of service. Learned counsel appearing for the official liquidator and counsel appearing for the financial institutions (respondents Nos. 10, 11 and 12) stated that they have no objection if the petition is allowed. However, they claim their due protection being secured creditors.

6. During the pendency of this petition, an application under Order 6, rule 17 of the Civil Procedure Code, 1908, was filed, being C.A. No. 108-A of 1998 (to be registered), for amendment of the petition bringing to the notice of the court that the bank has already filed claim application before the Debt Recovery Tribunal on February 12, 1998, and the same was pending before the Tribunal. The application for the amendment was allowed as nobody appeared to oppose the application and the amended petition was directed to be taken on record, vide order dated February 20, 1998. The application filed before the Tribunal has been annexed to the amended petition.

7. Having heard learned counsel for the parties and keeping in view the fact that none appeared to oppose this petition, I find no legal impediment in granting the permission prayed for by the petitioner-bank. It is a settled principle of law that permission to prosecute a petition or legal proceedings before the forum of competent jurisdiction can be sought by an applicant subsequent to the filing of such petition/application.

8. Consequently, this petition is allowed, The petitioner-bank is granted permission to prosecute its application filed before the Debt Recovery Tribunal, Jaipur, in accordance with law. This is, however, without prejudice to such contentions which may be raised on behalf of the respondent-company. It is made clear that this petition is conditional, the condition being that the petitioner-bank would not take out execution of the decree/recovery certificate issued by the Debt Recovery Tribunal, Jaipur, against the assets of the respondent-Company without prior permission of the company court.

9. Consequently, this petition is allowed in the above terms.