(1993) 02 RAJ CK 0016

In the Rajasthan High Court

Case No : Company Application No. 4 of 1992 in Company Petition No. 3 of 1992

State Bank of India APPELLANT

Vs

Spintex Tubes and Constructions Ltd. and Others RESPONDENT

Date of Decision : 10-02-1993

Acts Referred:

Companies Act, 1956 — Section 446, 456, 529A
State Financial Corporations Act, 1951 — Section 29, 46B

Citation : (1995) 82 CompCas 290 : (1993) 1 RLW 510 : (1993) 2 WLC 236

Hon'ble Judges : I.S. Israni, J

Bench : Single Bench

Advocate : G.K. Bapna, for official liquidator, G.K. Garg, for RIICO and ICICI, Sudhir Gupta, for the Appellant; G.S. Bapna, for the Respondent

Final Decision : Allowed

Judgement

I.S. Israni, J.—An application dated May 5, 1992, u/s 446 read with Section 456 of the Companies Act, 1956, and Rules 6 and 9 of the Companies (Court) Rules, 1959, read with Section 151 of the Civil Procedure Code, has been filed by the Rajasthan State Industrial Development and Investment Corporation Ltd. (RIICO), in which it has been prayed that leave be granted to the applicant-RIICO to remain outside the winding-up proceedings.

2. An application has also been filed on behalf of the State Bank of India, stating therein that the Board for Industrial and Financial Reconstruction (BIFR), after conducting an enquiry u/s 16 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, "the Act, 1985"), vide its order dated May 10, 1991, has recorded the opinion u/s 20(1) of the Act, 1985, that it was just and equitable as also in public interest that the respondent-company should be wound up. This opinion was forwarded by the Registrar, BIFR to this court for further action according to law. It was further stated that RIICO and ICICI were fully aware of the proceedings in respect of the company before BIFR as also the order dated May 10, 1991, passed by BIFR. After the passing of the aforesaid

order, RIICO, on February 13, 1992, has taken over possession of the immovable and movable assets of the respondent-company. It was also stated that RIICO and ICICI were proceeding with the sale of the same. It was pointed out that the respondent-company had to pay about Rs. 16,53,986 to the State Bank of India (SBI), for recovery of which, a civil suit has already been filed by the bank against the respondent-company. It was further pointed out that the outstandings of RIICO and ICICI against the respondent-company are about rupees one crore and rupees 155 lakhs, respectively. In these circumstances, an order dated March 27, 1992, was passed by this court to wind up Spintex Tubes and Cons. Ltd. and notice of this order was given to the official liquidator to proceed in accordance with law.

3. The application dated May 5, 1992, has been filed on behalf of the RIICO with a prayer that RIICO is a secured creditor of the respondent-company, which is authorised under law to recover its dues in the manner provided u/s 29/30 of the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act, 1951"). It is also provided u/s 46B that it shall have overriding effect over other laws, which may be inconsistent therewith. The RIICO, therefore, being a secured creditor, opts to remain out of the winding-up proceedings by way of abundant caution, prays that leave be granted to RIICO to remain outside the winding-up proceedings, so that it may proceed to realise its dues in the manner provided under the provisions of the Act, 1951,

4. It is pointed out by Shri G.S. Bapna, G.K. Garg and Sudhir Gupta, learned counsel that Sections 529A and 530 of the Companies Act deal with preferential payments to be made, therefore, provision for making such payments, including the payments payable to workmen, shall have to be made from the sale proceeds. It is further pointed out that RIICO was party to the proceedings before BIFR and was well aware of the opinion regarding winding-up of the company given by the BIFR. It is, therefore, submitted that RIICO should not have taken possession of the assets of the company but allowed the official liquidator to proceed with the matter in accordance with the provisions of the Companies Act. The RIICO has, thus, tried to overreach the court. It is also pointed out that the SBI is the first secured creditor for current assets, e.g., stocks, which are hypothecated with the bank and has a second charge on the fixed assets.

5. I have heard all the parties and gone through the relevant provisions of law. It is evident that RIICO had already taken possession on February 13/14, 1992, before the winding-up order was passed on March 27, 1992. The contention that since RIICO was aware of the proceedings before the BIFR and the recommendation made regarding winding-up and that, therefore, it has tried to overreach the court by taking over possession, has no force, because RIICO is entitled to act under the provisions of the State Financial Corporations Act, 1951 (for brevity, "the Act, 1951"). It may be pointed out that RIICO does not oppose the winding-up proceedings even now and has merely made a prayer for granting

leave to remain outside the winding-up proceedings, in accordance with the provisions of the Act, 1951. u/s 29, possession has already been taken by RIICO. The RIICO is a statutory body and there is no reason to doubt its bona fides while it exercises its power u/s 29 of the Act, 1951. The RIICO has exercised its right u/s 29 to sell the property and, in fact, no leave of court is necessary. It may also be pointed out that the jurisdiction of this court may arise only when the sale is challenged on the ground that it is not bona fide and has been made for extraneous considerations. In such circumstances, this court may interfere, if any occasion so arises. In the matter under consideration, the company, admittedly, has taken loans from RIICO and ICICI. It has mortgaged and hypothecated its assets and properties in their favour by executing various documents. When the winding-up order was passed, all the assets of the company were in the possession of RIICO. As mentioned in the order dated November 20, 1992, Mr. Mathur, learned counsel, agreed that the valuation of the property shall be done by a Government approved valuer. The official liquidator will be associated during that process and all the expenses of the official liquidator for going or sending his representative will be paid by the RIICO. He further agreed that wide publicity in at least one local Hindi daily of Rajasthan and two national dailies, published from Delhi, will be made, regarding the sale. Keeping in view the provisions of Section 529A of the Companies Act, it was also agreed by Mr. Mathur that ICICI and RIICO will give undertakings that they will keep the money ready payable to workmen, regarding their claims, which may be filed with the official liquidator. The official liquidator shall call for applications from the workmen to file their claims, if any, and verify their genuineness.

6. I do not find any force in the contention of Mr. Gupta that sale should be conducted by RIICO and the bank jointly, so that, the best price may be secured. As pointed out by Mr. Mathur, a representative of the bank will be associated with the sale as per the guidelines of the RIICO, therefore, the bank will have opportunity to examine the process of sale as also to give any suggestions in this regard. I do not find any force in the contention of the learned official liquidator that since the order of winding up has already been passed by this court, the sale should be conducted subject to confirmation of this court. It may be pointed out that Section 46B of the Act, 1951, provides that the provisions of the Act, 1951, and of any rules or orders made thereunder shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore, the rights of RIICO u/s 29 and other relevant provisions of the Act cannot be curtailed. However, it may be pointed out that the position may be different in a situation, where the official liquidator has taken possession of the assets of the company after the winding up order has been passed by this court and, thereafter the financial institutions like RIICO/RFC want to exercise their powers u/s 29 of the Act, 1951. However, this position does not exist in the matter under consideration.

7. A similar view was taken in Aryavarta Plywood Ltd. v. Rajasthan State

Industrial and Investment Corporation Ltd. [1990] 1 Comp LJ 222 ; [1991] 72 Comp Cas 5 (Delhi), in which, it was held by the Delhi High Court that even where the financial corporation, which is a secured creditor, took over the assets of the company during the winding up proceedings and disposed of the same before passing of the winding up order, it was held that by virtue of Section 29 of the Act, 1951, the corporation was justified in taking possession and selling the assets of the company without intervention of the court. It was further held that Section 537 of the Companies Act was inapplicable to such a case and that the financial corporation was competent to enforce a mortgage u/s 29, without approaching a civil court. In Boolani Engineering Corporation v. Asup Synthetics and Chemicals Ltd. [1990] 1 RLR 10 ; [1994] 81 Comp Cas 872 (Raj), it was held by this court that despite the fact that winding up proceedings have commenced and are pending, the financial corporation has a right u/s 29 of the Act, 1951, to sell the property and no leave of the court is necessary. It was further observed that the court''s jurisdiction may arise only when such sale is challenged as being not bona fide and for extraneous considerations. The application to opt to remain out of the winding up proceedings was allowed. In Miscellaneous Application No. 16 of 1990 in S. B. Company Petition No. 1 of 1985 (Ayrgee Engineering and Co. v. India Electricals Ltd.), vide order dated November 29. 1991, the same view was taken.

8. In the result, the application dated May 5, 1992, filed on behalf of the RIICO is allowed. However, it shall be liable to act in accordance with this order as also the order dated November 20, 1992, regarding advertising, sale, etc., of the property. It shall also keep the share of the sale proceedings ready for payment to the workmen regarding their claims as finalised by the official liquidator in accordance with the provisions of Section 529A of the Act.

9. In view of the above order, the stay order dated March 27, 1992, directing the RIICO not to take any steps for the sale, is vacated and application dated April 30, 1992, filed on behalf of the RIICO is also allowed.

