(2002) 09 MAD CK 0162

In the Madras High Court

Case No : Application No. 415 of 2002 in Insolvency Notice No. 76 of 2002

V. Ravi Srinivasan and Another — APPELLANT

Vs

Manipal Finance Corporation Ltd. — RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 9(2)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 16(2), 22(1), 3(1)

Citation : (2002) 09 MAD CK 0162

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P. Sathasivam, J.—The applicant herein guarantor has filed the above application to set aside the Insolvency Notice No. 76 of 2002 u/s 9(2) of the Presidency Towns Insolvency Act.

2. In the affidavit filed in support of the above application it is stated that the principal debtor M/s. TTG Industries Limited is a Public Limited Company and on account of accumulated losses, the net worth of the said principal debtor was fully eroded and therefore a reference was made u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (herein after called as "the Act") to BIFR and the reference was registered vide No. 111 of 2001. The BIFR has also initiated further proceedings u/s 16(2) of the Act. The respondent herein had initiated arbitration proceedings against the first debtor Company M/s. TTG Industries Limited in A.P.No. 17 of 1999, claiming a sum of Rs. 76,51,296 together with interest at 3% per annum. The award was passed on 4.8.2000, directing the petitioner herein to pay a sum of Rs. 76,51,296 together with interest at 21% per annum from 1.12.1998, till the date of realisation.

3. It is further stated that questioning the said arbitration proceedings, an appeal was filed before the District Court, Mangalore. The said appeal was dismissed as

time barred, against which the petitioner preferred an appeal before the High Court of Karnataka at Bangalore on 16.9.2001. By order dated 7.2.2002, the High Court of Karnataka at Bangalore rejected the appeal. Against the said order of the Karnataka High Court, the applicant preferred SLP before the Hon''ble Supreme Court and the same is pending. In the meanwhile, the respondents have filed E.P.No. 120 of 2001 before the Sub Court, Poonamallee for executing the award. A counter has been filed, challenging the maintainability of the petition as the judgment debtor is a Sick Industrial Company. The petitioner herein is a guarantor to the principal debtor, which is a Sick Industrial Company and hence u/s 22(1) of the Sick Industrial Companies Act, the immunity under these provisions applicable to a Sick Industrial Company, accordingly the very same provision would also apply to the guarantor herein. With these particulars the petitioner has filed the present application to set aside the Insolvency Notice No. 76 of 2002.

4. The petitioning creditor first respondent -- M/s. Manipal Finance Company filed a counter affidavit disputing various averments made in Appln.No. 415 of 2002. It is stated that till date their Company has not received any amount from 4.8.2000 either from the applicant or from M/s. TTG Industries. As per the award or decree, the decree holder can execute the decree or award according to law. The said award is passed jointly and severally against the applicant and M/s. TTG Industries. Section 22(1) of the Sick Industrial Companies Act is not applicable to this case.

5. In the light of the above pleadings, I have heard the learned counsel for the applicant as well as the respondent -- petitioning creditor.

6. The only point for consideration in this application is whether any ground is made out to set aside the Insolvency Notice No. 76 of 2002 issued u/s 9(2) of the Presidency Towns Insolvency Act?

7. I have already referred to the case of both parties. The applicant herein is the guarantor and the principal debtor is M/s. TTG Industries, which is a Public Limited Company. Among other factual details, it is asserted that the principal debtor has been declared as a Sick Industrial Undertaking u/s 3(1)(O) of the Sick Industrial Companies Act, 1985 and reference in 111 of 2001 is pending before the BIFR for enquiry. The fact that the applicant is the guarantor to the principal debtor which is a Sick Industrial Company and the same provision is applicable to the applicant/guarantor has been been specifically stated in para 8 of the affidavit.

8. In the counter affidavit filed by the petitioning creditor the said factual aspect has not been denied. In this regard, learned counsel appearing for the applicant by drawing my attention to Sub-section (1) of Section 22 of the Act would contend that inasmuch as the principal debtor is declared as a Sick Industry and the proceeding is pending before BIFR, the same is applicable to the applicant who is none else than the guarantor. In support of his contention, apart from

referring Sub-section (1) of Section 22, he also relied on the recent decision of the Supreme Court reported in the case of Patheja Brothers Forgins and Stamping and Anr. v. I.C.I.C.I. Ltd., and Ors., 2000 102 CompCase 21 (SC) . After considering the very same provision, namely Sub-section (1) of Section 22, Their Lordships have held,

"In remains to deal with the judgment of the Division Bench of the Bombay High Court in Madalsa International Limited, Mumbai and others Vs. Central Bank of India, . The Division Bench found no ground to so read Section 22 as to hold that a suit against the guarantor also stands suspended. It said (page 167 of Comp Cas): The guarantors could be absolute third parties or directors of an industrial company. However, in both cases it would be the guarantors, whether third parties or directors, who would be affected personally; and we see no reason to interpret the section in such a manner that apart from the properties of the industrial company, the Legislature intended to protect the personal interest of the guarantors as proceedings against guarantors and their personal properties would not affect the revival of the industrial company in any manner whatsoever. In the circumstances the words ''of any guarantee in respect of any loans, or advance granted to the industrial company'' in the context will have to be read as the guarantee given by the industrial company itself and none else".

We have analysed the relevant words in Section 22 and found that they are clear and unambiguous and that they provide that no suit for the enforcement of a guarantee in respect of any loan or advance granted to the concerned industrial company will tie or can be proceeded with without the consent of the Board or the Appellate Authority. When the words of a legislation are clear, the court must give effect to them as they stand and cannot demur on the ground that the Legislature must have intended otherwise. "

It is clear from the above decision of the Supreme Court that the benefit conferred on the principal debtor is applicable to the guarantor. It is not disputed that as on date the matter is pending before BIFR.

In the light of what is stated above and in view of the statutory provisions as interpreted by the Supreme Court, the respondent -- petitioning creditor cannot be permitted to proceed with the insolvency proceedings. On this ground, the Insolvency Notice No. 76 of 2002 issued u/s 9(2) of the Presidency Towns Insolvency Act is set aside. Consequently, Application No. 415 of 2002 is allowed.

