

KILLICK NIXON LTD.
v.
THE CUSTODIAN AND ORS.
(Civil Appeal No. 2724 of 2006)

APRIL 27, 2010

[B. Sudershan Reddy and Surinder Singh Nijjar, JJ.]
2010 (5) SCR 275

The Judgment of the Court was delivered by

B. SUDERSHAN REDDY, J. 1. These appeals are directed against the orders of interlocutory nature passed by the Special Court constituted under the provisions of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as 'the Act'). They are being disposed of by this common order since the question that arises for our consideration is one and the same.

2. M/s. Dhanraj Mills Private Limited in its ordinary course of business had advanced interest free loans to the appellant M/s. Killick Nixon Limited and its group of companies. In the year 1992, the Special Court found that M/s. Dhanraj Mills Private Limited, its Directors and their close associates indulged in fraudulent securities transactions resulting in siphoning of huge funds of various banks. The banks had gone into liquidation as a result of those fraudulent securities transactions. The Special Court also held that the end beneficiaries of the siphoned funds were the Directors of M/s. Dhanraj Mills Private Limited and Director of Bank of Karad which bank was used as a conduit for the fraudulent transactions.

3. M/s. Dhanraj Mills Private Limited was accordingly notified under the provisions of the said Act. On and from the date of notification, the properties, movable or immovable, or both belonging to any person notified under sub-section (2) of Section 3 of the said Act shall stand attached, simultaneously with the issue of the notification. Be it noted that M/s. Dhanraj Mills Private Limited itself owned 33% of M/s. Killick Nixon Limited and the person in ultimate control, ownership and

management of M/s. Killick Nixon Limited is one T.B. Ruia (who at all relevant points of time was Managing Director of M/s. Dhanraj Mills Private Limited) who was also notified under the Act.

4. The Custodian, on behalf of M/s Dhanraj Mills Private Limited, proceeded against the appellant M/s. Killick Nixon Ltd. and its group Companies for recovery of loans totaling Rs.20,81,67,031/-. The amounts due to M/s. Dhanraj Mills Private Limited also stood attached with the issue of notification.

5. In the year 1995, the appellant M/s. Killick Nixon Limited and its group Companies filed separate applications before Special Court for ascertaining their individual liabilities with a request to grant time for recompense. Simultaneously, the Custodian also filed applications for fixation of liability and demanding interest @ 24% per annum. In the year 1997, the Special Court passed decrees against the appellant and its group Companies which are consent decrees *qua invitum* the Custodian, whereby individually ascertained amounts were to be paid in installments with the interest @ 15% per annum. Similar consent decree was passed against 13th group Company also.

6. M/s Dhanraj Mills Private Limited, in the meanwhile, made an application before the Special Judge contending that the amounts recovered from the group Companies cannot be attached towards the debt payable by M/s Dhanraj Mills Private Limited to the Custodian, since there was no nexus between loans advanced to original judgment-debtors and the transactions with the banks. The prayer in the said application was that the amount so recovered was to be freed from attachment until to be paid back to M/s Dhanraj Mills Private Limited, by the Custodian. The Special Court dismissed the claim so made on the ground that the Directors of M/s Dhanraj Mills Private Limited and its close associates were involved in fraudulent deals and have siphoned off funds belonging to banks. The Special Court found overwhelming evidence that M/s Dhanraj Mills Private Limited is liable to make payment and all its assets fall within the purview of the Act. It is in this order the Special Court specifically held that this is a fit case “for the corporate veil to be torn off” as M/s

Dhanraj Mills Private Limited had no explanation whatsoever for how such large amounts of “loans” could have been advanced to the appellant and its group Companies when M/s Dhanraj Mills Private Limited itself had been defunct for many years without any commercial activity of its own.

7. In the year 1999, The Special Court having considered the request of the original judgment debtors, granted extension of time and directed the Custodian not to proceed with execution of the decrees, subject to payment of defaulted installments. As usually, the appellant and its group Companies defaulted in payment of the said amounts once again. Left with no alternative, the Custodian filed execution applications against the judgment debtors for recovery of dues from M/s Dhanraj Mills Private Limited. It is not necessary to refer the facts, the subsequent events in detail and various objections raised from time to time as to the sale of properties in the process of realizing the decretal amounts. However, one important fact that may be required to state is that the Special Court by its earlier order dated 30th November, 2001 required the judgment debtors to pay Rs.16 crores payable towards all decrees for considering the prayer for extension of time to which all of them agreed to do so. This singular fact establishes that even judgment debtors were treating the separate decrees passed against each one of them as a consolidated common decree. The Custodian, at all points of time treated them as a group to which no objections were raised at any point of time. The sale proceeds were accordingly appropriated against dues of the entire group of M/s Killick Nixon Ltd.

8. The dispute now raised by the appellants is that the sale proceeds or the properties of M/s. Killick Nixon group companies ought to be apportioned individually decree wise. This is contrary to its earlier stand. The material available on record also reveals that these group companies have always referred to the aggregate principal amount of alleged loan given by M/s. Dhanraj Mills Private Limited.

9. The appellants submitted before the Special Court that the liabilities of the judgment debtors under separate decrees were not joint liabilities inasmuch as each

judgment debtor is a separate entity in law having their separate properties and assets. It was the case of the appellants that merely because the judgment debtors are group companies the amount of decree passed against them cannot be consolidated. It was their case that the Custodian cannot be permitted to appropriate the amounts paid by the judgment debtors as also the sale proceeds realized from the sale of properties towards a consolidated decree. It is not necessary to refer in detail the stand taken by the Custodian opposing the plea of the appellants. Various instances were pointed out by the Custodian as to how the appellants themselves were treating the decrees as a consolidated one.

10. It was specifically demonstrated by the Custodian that the appellants not only treated them as one group but have themselves proceeded and agreed to have appropriation of the sale proceeds of the properties sold on group basis. The averment in the petition filed in the Special Court contained figures relating to the aggregate dues of the group, the aggregate amounts received from the sale of properties and the aggregate balance amount.

11. The Special Court after a detailed consideration came to the conclusion that M/s. Killick Nixon Limited and others are group companies and they are all controlled by M/s. Dhanraj Mills Private Limited – notified party and the amounts that are being recovered in execution of the decrees are really public funds which were siphoned off by the Directors of M/s Dhanraj Mills Private Limited, and parked in the companies controlled by them. The Special Court accordingly held that the appropriation of sale proceeds made by the Custodian is proper and accordingly the Custodian should proceed further to recover the amount that remained in balance.

12. In these appeals, the singular submission made by Shri Dhruv Mehta, learned senior counsel for the appellants, is that the appropriation of sale proceeds ought to have been carried out individually against each of the decree and not as done by the Custodian treating all the decrees as a consolidated decree.

13. Having heard learned counsel for the appellants and respondent, we are satisfied that an interference with the impugned order passed by the Special Court,

which is purely interlocutory and does not decide any rights of any party, is unwarranted. The Special Court did not decide any rights of the parties but merely passed orders from time to time including the one under the appeals for the realization of the amounts under the decrees passed which attained their finality. The procedure adopted for realization of the amounts under the decrees and the manner of appropriation, in our considered opinion, by itself does not amount to deciding any *lis* as such between the parties. Under Section 10 of the Act that an appeal shall lie to this Court from any judgment, sentence or order of the Special Court but not against the interlocutory orders. Appeals against interlocutory orders are specially excluded under the said provision.

14. There cannot be any iota of doubt that M/s Killick Nixon and other companies were always treated as one group and there is a clear finding in this regard by the Special Court that the said group of companies are nothing but front companies of M/s. Dhanraj Mills Private Limited.

15. The orders impugned in these appeals are purely interlocutory in nature against which no appeal lies to this court under Section 10 of the Act. We are fortified in that view of ours by a decision of this court in *CIFCO Properties (P) Ltd. and Others vs. Custodian and Others*¹. Even on merits, we find that the Special Court having meticulously analyzed the facts, arrived at a proper conclusion and rightly treated the decrees as a consolidated one.

16. We find no merit in these appeals and they are accordingly dismissed without any order as to costs.