

PETITIONER:
NATIONAL TEXTILES CORPORATION (SOUTH MAHARASHTRA) LIMITED

Vs.

RESPONDENT:
TAMIL NADU CO-OPERATIVE, MARKETING FEDERATION LTD. & ANR.

DATE OF JUDGMENT: 27/07/1998

BENCH:
S.C. AGARWAL, S.P. BHARUCHA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

BHARUCHA, J.

The judgment and order of a Division Bench of the High Court at Bombay is the subject matter of this appeal.

The appeal arises in the following circumstances, shortly put. On 4th February, 1991, the appellant entered into an agreement with the first respondent. Thereunder the appellant was to procure 'kapas'; the kapas would be processed at the first respondent's ginning factory and it would be sold to the appellant. The agreement required the appellant to give an irrevocable bank guarantee of the value of Rs.50 lakhs in favour of the first respondent to cover the price of the kapas. Similar agreements were entered into from time to time for subsequent periods, the last being on 25th April, 1995. The first bank guarantee was procured by the appellant from the second respondent. It was dated 11th April, 1991, and it was extended from time to time until 1st October, 1995.

With effect from 18th October, 1983, the management of the textile undertakings specified therein was vested in the Central Government by virtue of the Textile Undertakings (Taking Over of Management) Act, 1983. The Textile Undertakings (Nationalisation) Ordinance, 1995 was promulgated on 27th June, 1995. It was replaced by the Textile Undertakings (Nationalisation) Act, 1995 (hereinafter referred to as the 'Act'). The aforesaid textile undertakings were, thereby, vested in the appellant with effect from 1st April, 1994.

The appellant wrote to the second respondent on 26th September, 1995, and alleged for the first time that the agreements had been entered into on behalf of the Finlay Mills and Gold Mohur Mills which had been nationalised on 27th June, 1995. The letter stated that only the sum of Rs. 2,27,900/- was due by the appellant on account of the said agreements because that amount pertaining to deliveries subsequent to 1st April, 1994. The balance amount pertaining to deliveries prior to 1st April, 1994, could not, it was alleged, be enforced against the appellant and the second respondent was, therefore, called upon not to make payment under the bank guarantee. The amount of Rs.2,27,900/- was

paid on 28th April, 1995, to the first respondent.

The first respondent invoked the bank guarantee for the balance amount. Thereupon the appellant filed a suit in the High Court praying for a declaration that the bank guarantee stood discharged and/or was void and of no legal effect; for a mandatory/permanent injunction restraining the first respondent from receiving any money under or in respect of or pursuant to the bank guarantee and restraining the second respondent from making any payment to the first defendant under the bank guarantee; and for interim and ad-interim reliefs in these terms. A notice of motion was taken out for these interim reliefs. The prayer for ad-interim relief thereon was rejected on 7th October, 1995. The appellant took out a chamber summons for amendment of the plaint and, pending the disposal of the chamber summons, prayed that the second defendant be restrained from debiting the account of the appellant or from recovering from the appellant in any manner any amount paid by the second respondent to the first respondent under the bank guarantee. This prayer for ad-interim relief was rejected on 10th October, 1995. Appeals were filed by the appellants against the two orders aforementioned refusing ad-interim relief. The appeals were dismissed by the Division Bench on 11th October, 1995 and 17th October, 1995. aggrieved thereby, the appellants are in appeal by special leave. When issuing notice on the special leave petition, this Court stayed encashment of the bank guarantee but there is no mention of any interim relief in the order granting leave.

Learned counsel could not tell us what had happened to the notice of motion at the stage of its hearing.

Great reliance was placed by learned counsel for the appellant upon the provisions of the said Act to which we shall refer. His only submission was that, by reason of these statutory provisions, the appellant was not liable to the first respondent for any dues under the said agreements in respect of deliveries prior to 1st April, 1994, and that, therefore, the second respondent could not honour the bank guarantee in respect of amounts due to the first respondent under the said agreements for transactions before 1st April, 1994.

Section 2(1)(a), (m), Section 3 and Section 5 of the Act, upon which emphasis was placed by learned counsel for the appellants, read thus:

"2(1).

<a) "appointed day" means the 1st day of April, 1994;

(m) "textile undertaking" or "the textile undertaking" means an undertaking specified in column (2) of the First Schedule, the management of which was, before the appointed day, taken over by the Central Government under the Textile Undertaking (Taking Over of Management) Act, 1983, or as the case may be, under the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976.

3.(1) On the appointed day, the right, title and interest of the owner in relation every textile undertaking shall stand transferred to, and shall vest absolutely in, the Central Government.

(2) Every textile undertaking which stands vested in the Central Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation.

5.(1) Every liability, other than the liability specified in sub-section (2), of the owner of a textile undertaking, in the relation to the textile undertakings 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 the National Textile Corporation.

(2) any liability arising in respect of-

(a) loans advanced by the Central Government, or a State Government, or both, to a textile undertaking (together with interest due thereon) after the management of such undertaking had been taken over by the central Government under section 3 of the Textile Undertakings (Taking Over of Management) Act, 1983 or as the case may be under section 3 of the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management), 1976;

(b) amounts advanced to a textile undertaking after the management of such undertaking had been taken over by the central Government under section 3 of the Textile Undertakings (Taking Over of Management) Act, 1983, or as the case may be under section 3 of the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976, by the National Textile Corporation or by a State Textile corporation, or by both, together with interest due thereon;

(c) wages, salaries and other dues of employees of the textile undertaking, in respect of any period after the management of such undertaking and been taken over by the Central Government, shall, on and from the appointed day, be the liability of the central Government and shall be discharged, for and on behalf of that Government, by the National Textile Corporation as and when repayment of such loans or amounts becomes due or as and when such wages, salaries or other dues

become due and payable.

(3) For the removal of doubts, it is hereby declared that,-

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability, other than the liability specified in sub-section (2), in relation to a textile undertaking, in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the National Textile Corporation;

(b) no award, decree or order of any court, tribunal or other authority in relation to any textile undertaking, passed after the appointed day, in respect of any matter, claim or dispute in relation to any matter not referred to in sub-section (2), which arose before that day shall be enforceable against the Central Government or the National textile Corporation;

(c) no liability of any textile undertaking or any owner thereof in relation to any textile undertaking before the appointed day, for the contravention of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation.

we turn to the said agreements and the bank guarantee.

The said agreements are between the appellant and the first respondent. Clauses (1),(3),(4),(6),(7) and (12) of the said agreements read thus:

(1) This tie-up arrangement will be to the extent of procurement of Suvin cotton according to the requirement of National Textile Corporation Ltd., South Maharashtra, Bombay for the period from December 1990 to August 1991. In this tie-up scheme the procurement of Suvin cotton kapas will be done in the purchase centres in the State of Tamil Nadu as specified by the National Textile Corporation (South Maharashtra) Limited, Bombay.

(3) The kapas, thus procured will be processed at Salem under the supervision of the representatives of both Tamil Nadu Co-operative Marketing Federation Limited and National Textile Corporation (South Maharashtra) Limited, Bombay.

(4) The cotton seeds so obtained in processing will be disposed by National Textile Corporation (South Maharashtra) Limited then and there at their risk, and Tamil Nadu

Cooperative Marketing Federation Limited will extend its assistance in the disposal of the seed stocks. Tamil Nadu Cooperative Marketing Federation Limited is not responsible for any processing/invisible loss if any in the business transaction.

(6) The National Textile Corporation (South Maharashtra) Limited, Bombay will give an "Irrevocable Bank Guarantee" to the value of Rs.50 lakhs (Rupees fifty lakhs only) in favour of Special Officer, Tamil Nadu Co-operative Marketing Federation Limited, for the coverage of indented Suvin Cotton and the proposed Bank Guarantee will be for a period of 120 days from the date of execution of the Agreement.

(7) National Textile Corporation (South Maharashtra) Limited, Bombay will make cent percent payment of lint cost by means of Demand Draft drawn in favour of Regional Officer, Salem payable at Salem within 30 days from the date of delivery of cotton lint Bales to the National Textile Corporation (South Maharashtra) Ltd., representative at Salem along with the service charges at the rate of 1%. If the said payment is not made within 30 days from the date of supply of stocks, Tamil Nadu co-operative Marketing Federation Limited, is at liberty to invoke the "bank guarantee" given by the National Textile Corporation (South Maharashtra) Limited, Bombay for realisation of the cotton sale proceeds inclusive of service charges and other amount due to the Tamil Nadu Co-operative Marketing Federation Ltd., Madras.

12. This tie-up arrangement will be to the extent of procurement of suvin cotton kapas to the requirement of the unit mills under control of National Textile Corporation (South Maharashtra) Limited, Bombay, for the period from December 1990 to August 1991.

Under the bank guarantee the second respondent unequivocally and unconditionally agreed to pay on demand in writing from the first respondent any amount upto and not exceeding Rs. 50 lakhs or the value of the cotton lifted by the appellant from the first respondent and not paid by the appellant to the first respondent, whichever was less, "in consideration of Tamil Nadu Co-operative Marketing Federation Ltd., having entered into a tie-up arrangement with National Textile Corporation (South Maharashtra) Ltd. for procurement of cotton kapas (suvin) as and when required by the Corporation during the period from December, 1990 to

August, 1991 on the terms and conditions set out in the agreement dated 4th February, 1991 between Tamil Nadu Co-operative Marketing Federation Ltd. and National Textile Corporation (South Maharashtra) Ltd. for the due performance of the same." It was only in 26th September, 1995, that the appellant claimed in a letter written to the second respondent that the said agreements had been entered into and on behalf of the Finlay and Gold Mohur Mills.

The said agreements make no mention of the Finlay or the Gold Mohur Mills. They record that the tie-up thereunder was for the appellant's requirement and that the cotton seeds obtained in the course of processing would be disposed of by the appellant. The appellant agreed thereunder to furnish an irrevocable bank guarantee in the sum of Rs.50 lakhs to the first respondent in respect of the price of the kapas purchased under the said agreements, the bank guarantee to be invoked if payment of the price was not made by the appellant within 30 days of supply. The appellant agreed to pay for the kapas by demand draft within 30 days of delivery to itself. Pursuant to its obligation aforementioned, the appellant furnished the irrevocable bank guarantee, issued by the second respondent, to the first respondent whereunder the second respondent unequivocally and unconditionally agreed to pay the first respondent on demand the price of the kapas not paid by the appellant. There is, therefore, no support to be found in these basic documents for the only argument on behalf of the appellant that the dues claimed by the first respondent are "in relation to the textile undertakings" of the Finlay and Gold Mohur Mills and, therefore, not liable to be discharged by the appellant by reason of the provisions of Section 5 of the Act. In fact, clause 12 of the said agreements states that the kapas was for all the mills of the appellant.

We are, therefore, of the view that the High Court was right in concluding that the appellant was not entitled to any ad-interim relief.

The appeals are dismissed with costs.