

CASE NO.:
Appeal (civil) 721 of 2008

PETITIONER:
National Textile Corpn. (DR & P) Ltd.

RESPONDENT:
Bank of Rajasthan & Ors.

DATE OF JUDGMENT: 28/01/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 20337 of 2005)
With

CIVIL APPEAL NO. 720 OF 2008
(Arising out of SLP (C) No.7681 of 2006)

Dr. ARIJIT PASAYAT, J.

SLP (C) No. 20337 of 2006

1. Leave granted.

2. Challenge in this appeal is to the judgment of Learned Single Judge of the Rajasthan High Court at Jaipur Bench dismissing this Civil Writ Petition filed by the appellant.

3. Background facts in a nutshell are as follows:

The Sick Textile Undertaking Nationalisation Act, 1974 (in short the \021Act\022) became operative with effect from 1.4.1974. One Textile Undertaking i.e. Mahalaxmi Mills Ltd. Bewar vested in the Central Government under the Act. The same was transferred to the National Textile Corporation (in short the \021Corporation\022) and thereafter to the present appellant which is a Subsidiary of the Corporation i.e. National Textile Corporation (Delhi, Punjab, Rajasthan) Ltd. Appellant\022s stand was that in terms of Section 3 of the Act, with effect from the appointed date i.e. 1.4.1974, every sick textile undertaking and the right title and interest of the owner in relation to such textile undertaking stood vested absolutely in the Central Government and in turn to the Corporation. Section 4 of the Act sets out the general effects of vesting. Under Section 5 of the Act, deals with the liability of the owner of the sick textile undertaking and clearly provides that every liability other than the liability specified in sub-section (2) of Section 5 of the owner of a sick textile undertaking in respect of any period prior to the appointed date was a liability of the owner and shall be enforceable against him and not against the Central Government or the Corporation. On 25.5.1978, respondent-Bank filed claim before the Commissioner for Payment (in short the \021Commissioner\022) raising demand of about Rs.34.72 lakhs. After examining the claim the Commissioner allowed the claim to the extent of about Rs.21.22 lakhs i.e. the amount outstanding against the owner on 31.3.1974 i.e. a day prior to the appointed date. The claim towards interest was rejected by the Commissioner. An appeal was also preferred by the respondent-bank before the District Judge under Section 23 of

the Act. By order dated 20.8.1987 the District Judge held that for a period subsequent to the appointed date liability would be of the owner and held that respondent was entitled to interest at the contractual rate for a period subsequent to 31.3.1974. The matter was remanded to the Commissioner to work out the details.

4. The order was challenged before the Rajasthan High Court. The controversy was restricted to the question of payment subsequent to 31.3.1974. The order was unsuccessfully challenged before the High Court and this Court. The Commissioner passed an award for an amount of about Rs.16.70 lakhs. Again an appeal was preferred before the District Judge wherein their stand was that the Commissioner had not calculated the amount of interest as per the earlier directions of the District Judge and the interest was to be calculated on the basis of six monthly rest. The District Judge allowed the appeal and again sent the matter back to the Commissioner. A revision was filed before the High Court on the ground that the District Judge had erred in awarding interest after 1.4.1974 on the liability of the erstwhile owner overlooking the position of law as contained in Sections 3, 4, 5 & 11. A transfer petition was filed before this Court with a request to stay further proceedings in different High Courts as common points were urged.

5. This Court by order dated 15.3.2004 directed the High Court to follow the decision of this Court in Civil Appeal No.2314 of 2000 and connected matters. An application was filed by one of the respondents in TP Nos.155-58 of 2004. This court clarified that the matters pending in the High Court would await the decision in which the issues arising for decision are the same or similar to those involved in Civil Appeal No. 2314 of 2000 on 21.7.2005. The High Court dismissed the writ petition as noted above. It was of the view that the matters agitated before the High Court have already been concluded by the High Court.

6. In support of the appeal, Mr. G.E. Vahanvati, learned Solicitor General, submitted that unfortunately there was no appearance before the High Court because of some misunderstanding. In any event the decisions of this Court in State Bank of Indore v. Commissioner of Payment & Ors.[2004(11) SCC 516] and in National Textile Coprn. (Guj.) Ltd. v. State Bank of India & Ors. [2006(7)SCC 542] have not been taken note of.

7. Learned counsel for the respondent No.1-Bank on the other hand submitted that the issue had attained finality and therefore the High Court was justified in dismissing the writ petition.

8. In State Bank of Indore v. Commissioner of Payment & Ors.[2004(11)SCC 516] the Bank had filed the appeal before this Court. It was inter alia observed in the said case as follows:

\023A glance at the provisions of the Act, extracted hereinabove, shows that by virtue of Section 3 the right, title and interest of the owner in sick textile undertakings stands transferred to and vests in the Central Government. Section 4 provides for the effect of such vesting. It shows that the liability, which vests in the Central Government, is only liability specified under sub-section (2) of

Section 5. This position is further clarified by Section 5(1) which states that except for liabilities mentioned in sub-section (2) of Section 5 all other liabilities would continue to be the liabilities of the owner of the sick textile undertakings and shall be enforceable against the owner and not against the Central Government or the National Textile Corporation. Thus by virtue of Section 5(1) the remedy for recovery of any liability is against the owner. Undoubtedly, the word "liability" would include not just the loan amounts but also the amounts due by way of interest of such loan amounts.

Sub-section (2) of Section 5 specifies which liabilities are taken over by the Central Government. Sub-section (2)(a) talks of loans advanced by the Central Government or the State Government. Thus, the legislature is now making a distinction between the terms "liability" and "loan". When the term "loan" is used it is specified that the loans would be "together with interest due thereon". The same clarification can be found even in Section 5(2)(b). This indicates the intention of the legislature. Thus even though the term "liability" includes liability for the interest amounts also, the term "loan" does not include the interest amount unless specified otherwise in the Act. This position is fortified by Section 9 wherein on the amounts paid to the owner interest at the rate of 4% is also payable. Thus, where the legislature wanted to specify that certain amounts would carry interest, it has done so specifically.

Section 21 provides that the amounts set out in the Second Schedule are to be paid in priority. The relevant portion of the Second Schedule reads as follows:

THE SECOND SCHEDULE

(See Sections 21, 22, 23 and 27)

Order of priorities for the discharge of liabilities in respect of a sick textile undertaking

PART A

Post-Takeover Management Period

Category I

- (a) Loans advanced by a bank.
- (b) Loans advanced by an institution other than a bank.
- (c) Any other loan.
- (d) Any credit availed of for purpose of trade or manufacturing operations.

Category II

- (a) Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.

- (b) Any other dues.

Thus, the heading of the Second Schedule provides "priorities for the discharge of liabilities". The term "liability" as stated above would include interest. It would include a loan. It would also include credits availed of. It would include revenue, taxes, cesses, rates

and other dues. However, the payment in priority is for a loan. The distinction in language makes it very clear that what was to be paid in priority was only the amount of the loan i.e. the principal amount and not the interest amount due thereon. Of course, payments towards interest would remain liabilities. But for recovery of that the remedy would be to proceed against the owner/surety. It is thus clear that the interest amounts are not to be paid in priority under the provisions of this Act. In this view, strictly speaking, even interest up to 31-3-1974 was not payable in priority. However, as the respondents have not come up in appeal we see no reason to interfere with that portion of the impugned judgment which directs payments of interest up to 31-3-1974. \023

9. Again in National Textile Coprn. (Guj.) Ltd. v. State Bank of India & Ors. (2006(7) SCC 542) after referring to State Bank of Indore\022s case (supra) this Court observed as follows:

\024There exists a difference between a loan and liability; whereas the principal amount would come within the purview of priority claim, claim of interest would not.

The High Court in its impugned judgment relied upon State Bank of India v. Edward Textile Mills Ltd. The said decision was reversed by this Court in State Bank of Indore v. Commr. of Payments, holding: (SCC p. 522, paras 9-11)

\023Thus, the heading of the Second Schedule provides \021priorities for the discharge of liabilities\022. The term \021liability\022 as stated above would include interest. It would include a loan. It would also include credits availed of. It would include revenue, taxes, cesses, rates and other dues. However, the payment in priority is for a loan. The distinction in language makes it very clear that what was to be paid in priority was only the amount of the loan i.e. the principal amount and not the interest amount due thereon. Of course, payments towards interest would remain liabilities. But for recovery of that the remedy would be to proceed against the owner/surety. This Court has in Industrial Finance Corpn. of India Ltd. v. Cannanore Spg. and Wvg. Mills Ltd. held that by virtue of the provisions of the Act the liability of the principal debtor and that of the surety does not come to an end. It is held that if the compensation to be paid by virtue of Section 21 and the Second Schedule does not satisfy the full claim then the creditor is not barred from filing a civil suit for the balance. Further, in Punjab National Bank v. State of U.P. it has been held that even though mode of recovery, against a surety, may be affected the liability of the principal debtor and the guarantor does not get affected by the provision of this Act. Not only are these authorities binding us but we are in complete

agreement with what is laid down therein. It is thus clear that the interest amounts are not to be paid in priority under the provisions of this Act. In this view, strictly speaking, even interest up to 31-3-1974 was not payable in priority.\024

10. We find that there was no appearance before the High Court and, therefore, the relevance and applicability of the two decisions presently relied upon had not been considered.

11. We, therefore, set aside the impugned order and remit the matter to the High Court to hear the matter afresh and decide the matter in the light of what has been stated in State Bank of Indore\022s case (supra) and State Bank of India\022s case (supra). It is made clear that the parties shall be permitted to place materials in support of their respective stand.

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12. Leave granted.

So far as this appeal is concerned, the matter has been remanded to the Commissioner by the impugned order of the Bombay High Court at Nagpur Bench. It is needless to highlight that the Commissioner while deciding the issues afresh shall keep in view the decisions in State Bank of Indore\022s case (supra) and State Bank of India\022s case (supra).

13. Both the appeals are accordingly disposed of. No costs.