

A VIJAY KUMAR KARWA
v.
OFFICIAL LIQUIDATOR, ROHTAS INDS. LTD.
(Civil Appeal No. 1661 of 2008)

B FEBRUARY 28, 2008
[DR. ARIJIT PASAYAT, C.K. THAKKER AND
LOKESHWAR SINGH PANTA, JJ.]

C *Companies Act, 1956: s.483 – Appeal filed under –
Summary disposal of – Correctness of – Held: Not correct as
it was a statutory appeal – Matter remitted to High Court.*

D The appellant, representative of a group of
Companies was interested in the revival of a company
which had becomes sick. He filed an application in the
E High Court in the company case proceedings in respect
of that sick company and offered to pay Rs. 65.51 crores
as consideration money for purchase of assets of the
company in liquidation and proposed to invest Rs. 650
crores for revival of the industry. Official liquidator filed
reply to the prayers made in the application by the
appellant.

F The matter was heard by the High Court which
directed issuance of sale notice for assets of the company.
IA filed by the appellant was disposed of.

G Aggrieved by the said order, the appellant filed an
appeal under s.483 of the Companies Act before the
Division Bench on 11.1.2007. The Company Judge
proceeded with the matter and directed sale of the assets
of the company in favour of the Indian Railways who had
made offer of Rs.140 crores. On 12.3.2007, IA was filed by
the appellant giving details of his proposal. By the
impugned order the Division Bench dismissed the appeal.
In appeal to this Court, appellant contended that such

summary disposal is indefensible particularly when the appeal is a statutory appeal. A

Disposing of the appeal and remitting the matter to High Court, the Court

HELD : The High Court is bound to entertain the appeal against the order of the Single Judge who disposed it of on merit and not summarily or in limine. Every order which may reasonably be considered to be a judicial order as distinct from merely administrative order is appealable in terms of s.483 of the Companies Act. [Paras 6, 7] [629-E, F, G] B C

Shanta Genevieve Pommerat and Anr. v. Sakal Papers Pvt. Ltd. and Ors. AIR (1983) SC 269; Smt. Arati Dutta v. M/s. Eastern Tea Estates (P) Ltd. AIR (1988) SC 325 – relied on. D

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1661 of 2008.

From the Judgment and Order dated 2.4.2007 of the High Court of Judicature at Patna in C.A. No. 4/2006. E

P.S. Mishra, Manu Shankar Mishra, Ravi Chandra Mishra and Amit Pawan for the Appellant.

A. Sharan ASG, Devashish Bharuka, Ashok K. Srivastava, Rahul Kaushik, B.K. Prasad, D.S. Mahra, Binu Tamia, Sanjay Kapur, Rajiv Kapur, Shubhra Kapur and Arti Singh for the Respondent. F

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted. G

2. Challenge in this appeal is to the order passed by a Division Bench of the Patna High Court summarily dismissing the Company Appeal No.4 of 2006 filed by the appellant under Section 483 of the Companies Act, 1956 (in short 'the Act'). H

A 3. Background facts in a nutshell are as follows:

B Company case no.3 of 1984 was filed before the Patna High Court in respect of Rohtas Industries Ltd. (hereinafter referred to as the 'company') which purportedly had become sick. It is the case of the appellant that though efforts were made to revive, it could not materialize. Eventually the High Court started the process of disposal of the assets of the company. Appellant claiming to be representative of Bangar Group of Industries, Calcutta, filed an application in the said case. After giving particulars of the group which had annual turnover of about C Rs.5,000 crores, it was mentioned in the application that the appellant was interested in the revival of the company. It was also mentioned that the appellant had so decided because of the change of political conditions of the State and there was scope for industrial growth. The appellant offered to pay D Rs.65.51 crores as consideration money for purchase of assets of the company in liquidation and proposed to invest Rs.650 crores for revival of the industry. Steps were taken at various stages by the Government and the functionaries of the government on the application of appellant. Official Liquidator E was asked to file reply to the prayers made in the application by the appellant. Official Liquidator filed his response on 19.6.2006. On 25.8.2006 the matter was heard by the High Court which directed for issuance of sale notice for assets of the company. IA filed by the appellant was disposed of. F

G The appellant's grievance is that the same was disposed of without giving any reason or even without considering the desirability of the revival. Reference was made to the response of the Official Liquidator who had stated further information may be called for from the appellant. Aggrieved by the said order, the appellant filed an appeal under Section 483 of the Act before the Division Bench on 11.1.2007. The Company Judge proceeded with the matter and directed sale of the assets of the company in favour of the Indian Railways who had made H offer of Rs.140 crores. On 12.3.2007, IA was filed by the

appellant giving details of his proposal. By the impugned order the Division Bench dismissed the appeal. Though various grounds have been urged in support of the appeal, the primary ground of challenge is that such summary disposal is indefensible particularly when the appeal is a statutory appeal.

4. Learned counsel for the respondents, however, submitted that there was no merit in the appeal as the learned Company Judge had discussed with the matter in great detail. It was also submitted that the Indian Railways have already invested huge amounts of money.

5. Section 483 of the Act reads as follows:

"483. *Appeals from orders.*—Appeals from any order made, or decision given before the commencement of the Companies (Second Amendment) Act, 2002, in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction."

6. In *Shanta Genevieve Pommerat and another v. Sakal Papers Pvt. Ltd. And Ors.* (AIR 1983 SC 269) it was observed by this Court that the High Court is bound to entertain the appeal against the order of the learned Single Judge who disposed of it on merit and not summarily or in limine. The position was reiterated in *Smt. Arati Dutta v. M/s. Eastern Tea Estates (P) Ltd.* (AIR 1988 SC 325).

7. It may be noted that every order which may reasonably be considered to be a judicial order as distinct from merely administrative order is appealable in terms of Section 483 of the Act.

8. Above being the position, we set aside the impugned order of the High Court and remit the matter to it for fresh

- A disposal in accordance with law. Considering the factual scenario as highlighted by the parties, we request the High Court to dispose of the appeal by the end of August, 2008. The order of status quo dated 31.8.2007 passed by this Court shall be operative till the disposal of the appeal. It is made clear that by
- B giving interim protection, we have not expressed any opinion on the merits of the case.

D.G.

Appeal disposed of.