

NATIONAL TEXTILE CORPN. (DR & P) LTD.

v.

BANK OF RAJASTHAN & ORS.
(Civil Appeal No. 721 of 2008 etc.)

JANUARY 28, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Sick Textile Undertakings (Nationalisation) Act, 1974 – ss. 3, 4 and 5 – Liability to pay interest amounts occurring after appointed date – On loans – Question decided by High Court without taking into consideration decisions passed by Supreme Court on the question – Held: Since the decisions of Supreme Court were not cited before High Court, matter remitted to High Court for deciding the issue after taking into consideration the decisions passed by Supreme Court.

In the present matters, the question for consideration was whether under the provisions of Sick Textile Undertakings (Nationalisation) Act, 1974 interest amounts occurring after the appointed date on loans advanced by Banks are to be paid in priority.

Appellant contended that High Court had decided the matters without taking into consideration the decisions passed in *State Bank of Indore vs. Commissioner of Payment and Ors.* 2004 (11) SCC 516 and in *National Textile Corprn. (Guj) Ltd. vs. State Bank of India and Ors.* 2006 (7) SCC 542.

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

HELD: There was no appearance before the High Court and, therefore, the relevance and applicability of the two decisions passed by Supreme Court presently relied upon, had not been considered. Therefore, the impugned order is set aside and matter is remitted to the High Court to hear the matter afresh and decide the matter in the light

A of the cited decisions. The matter which has already been remanded to the Commissioner by the impugned order of the High Court shall be decided keeping in view the decisions cited. [Paras 11 and 12] [130-C, D, F]

B *State Bank of Indore vs. Commissioner of Payment and Ors.* **2004 (11) SCC 516**; *National Textile Corprn. (Guj) Ltd. vs. State Bank of India and Ors.* **2006 (7) SCC 542** – referred to.

C CIVILAPPELLATE JURISDICTION : Civil Appeal No. 721 of 2008.

From the final Judgment and Order dated 21.07.2005 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in S.B. Civil Writ Petition No. 8908 of 2002

D WITH

Civil Appeal No. 720 of 2008.

G.E. Vahanvati, S.G., B. Sunita Rao for the Appellant.

E Shyam Diwan, Hemant Sharma, Ajay Kumar, Biju and Anupam Lal Das for the Respondents.

The Judgment of the Court was delivered by

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

F 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:

G The Sick Textile Undertaking Nationalisation Act, 1974 (in short the 'Act') 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 'Corporation') and thereafter to the present appellant which is a
H Subsidiary of the Corporation i.e. National Textile Corporation

(Delhi, Punjab, Rajasthan) Ltd. Appellant's 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 'Commissioner') 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

A 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
B 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.

C 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
D 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.

E 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
F note of.

G 7. Learned counsei 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.

H 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:

“A glance at the provisions of the Act, extracted A
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 B
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 C
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 D
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 E
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 F
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, G
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: H

A "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*

B PART A
Post-Takeover Management Period

Category I—

(a) Loans advanced by a bank.

C (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.

D *Category II—*

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

(b) Any other dues."

E 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,
F 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
G recovery of that the remedy would be to proceed against
the owner/surety.

H 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. "

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's case* (supra) this Court observed as follows:

"There 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)

"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. 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

A 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
B 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.”

C 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.

D 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's case (supra) and *State Bank of India's case* (supra). It
is made clear that the parties shall be permitted to place
materials in support of their respective stand.

SLP(C) No.7681 of 2006

E 12. Leave granted.

F 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's case* (supra)
and *State Bank of India's case* (supra).

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

K.K.T.

Appeals disposed of.