

(2008) 141 CompCas 387

Bombay High Court

Case No: Appeal No. 1 of 2007 in Miscellaneous Petition No. 64 of 2000

Zenith Steel Tubes and
Industries Ltd. (formerly
AVS Industries Ltd.)
and Another

APPELLANT

Vs

Sicom Ltd.

RESPONDENT

Date of Decision: Jan. 29, 2007

Acts Referred:

- Sick Industrial Companies (Special Provisions) Act, 1985 - Section 22
- State Financial Corporations Act, 1951 - Section 31, 31(1), 32, 37(1)

Citation: (2008) 141 CompCas 387

Hon'ble Judges: R.M.S. Khandeparkar, J; D.Y. Chandrachud, J

Bench: Division Bench

Advocate: S. Ratnakumar Sharma, for the Appellant; Kevic Setalvad and P.V. Shah, for the Respondent

Judgement

R.M.S. Khandeparkar, J.

Admit. The learned advocate for the respondents waives service. By consent, heard forthwith.

The appellants challenge the order dated April 25, 2005, passed in Miscellaneous Petition No. 64 of 2000. The contention of the appellants is two- fold. Firstly, that in view of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, "the SICA"), the proceedings against the appellants could not have been invoked by the respondents and secondly, that the respondents could not have sought to enforce the guarantee unless the assets which are mortgaged in their favour had been realised. Reliance is sought to be placed in the decision of the apex court in the matter of [Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another](#), , Madalsa International Ltd. v. Central Bank of India AIR 1998 Bom 247

: [2000] 99 Comp Cas 153 and [Ved Prakash Agarwal Vs. Rama Petrochemicals Ltd.](#), while challenging the impugned order. The learned advocate appearing for the respondents has drawn attention to the decision of this Court in Dewal Singhal v. State of Maharashtra [2001] 106 Comp Cas 587 and an unreported decision of a Division Bench of this Court in Appeal No. 205 of 2006 in Misc. Petition No. 61 of 2000 (Vinod Kumar M. Gadia v. SICOM Ltd.--since reported in [2008] 141 Comp Cas 171--delivered on April 18, 2006). The learned single judge while passing the impugned order has placed reliance in his judgment delivered in Misc. Petition No. 61 of 2000. Appeal No. 205 of 2006 was filed against the said judgment in Misc. Petition No. 61 of 2000 and it was disposed of by the said order dated April 18, 2006, confirming the judgment delivered by the learned single judge in Miscellaneous Petition No. 61 of 2000.

2. Appellant No. 2 is the guarantor for appellant No. 1 for repayment of loan by the latter to the respondents. On account of default in repayment of loan, in November 2000, the respondents took out proceedings under Sections 31(1)(aa) and 32 of the State Financial Corporations Act, 1951, (hereinafter called as "the said Act"). During the pendency of those proceedings, the BIFR by its order dated May 23, 2002, declared appellant No. 1 as a sick industrial company in Reference Case No. 131 of 1999. Consequent to the said declaration, objection was sought to be raised before the learned single judge in the proceedings under the said Act that in view of Section 22 of the SICA the personal guarantee cannot be invoked against appellant No. 2, and secondly, that the guarantee cannot be enforced unless the assets which are mortgaged are realised. Both the contentions were rejected by the impugned order. Hence the appeal.

3. The first point for consideration which arises relates to bar u/s 22 to the proceedings u/s 37(1)(aa) of the said Act. In this regard, the Division Bench of this Court in Dewal Singhal's case [2001] 106 Comp Cas 587 had clearly ruled, after taking into consideration the earlier decisions of this Court as well as of the apex court, that only "suit" against the guarantor of a loan granted to the industrial company which has been declared as sick under the SICA is barred u/s 22 of the SICA and no other proceedings. In fact, with the said decision, the law is well-settled on this aspect and we do not find any decision, either of this Court or the apex court, contrary to the law laid down in that regard in Dewal Singhal's case [2001] 106 Comp Cas 587. The decisions sought to be relied upon by the learned advocate for the appellants nowhere assists the appellants in the matter in hand. The decision in [Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another](#), , was prior to the amendment which was introduced to Section 22 of the Act 12 of 1994. The decision was delivered on January 29, 1993. The amended provision of Section 22 clearly specifies that no "suit" for recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie. It does not prohibit any proceeding other than a suit in that regard and the law in that regard has been clearly laid down by the Division Bench of this Court in Dewal Singhal's case [2001] 106 Comp Cas 587. The decision in [Maharashtra Tubes Ltd. Vs.](#)

[State Industrial and Investment Corporation of Maharashtra Ltd. and Another, ,](#) therefore, is of no help to the appellants.

4. As far as the decision in [Madalsa International Ltd. and others Vs. Central Bank of India,](#) is concerned, it was in relation to execution proceedings and the Division Bench therein has held that considering the provisions of law, the court is of the clear opinion that the word "suit" in the amended portion of Section 22 cannot include in its ambit execution or execution proceedings. The decision, rather than assisting the appellants, clearly justifies the order passed by the learned single judge.

5. The second point for consideration relates to the contention that the guarantee cannot be enforced unless the creditor first proceeds against the mortgaged property. As regards the liability of the guarantor being coextensive with the principal is also well-settled and the creditor need not necessarily exercise his right as the mortgagee prior to proceeding against the guarantor to recover the dues is also well-settled by a catena of decisions of the apex court (vide : [Bank of Bihar Ltd. Vs. Dr. Damodar Prasad and Another,](#) and [State Bank of India Vs. Messrs. Indexport Registered and others,](#) .

6. As regards the decision in [M/S Patheja Bros. Forgings and Stamping and Another Vs. I.C.I.C.I. Ltd. and Others,](#) , it was in relation to suit against the guarantor. The decision of the Division Bench in [Ved Prakash Agarwal Vs. Rama Petrochemicals Ltd.,](#) was also in relation to the suit for enforcement of guarantee and not the proceedings of the nature initiated in the matter in hand u/s 31 of the said Act. However, it was also specifically ruled that merely because an industrial company is protected, the guarantor does not get protected automatically.

7. There is absolutely no substance in the appeal. In fact, the main contention of the appellants relates to non-maintainability of the proceedings in view of Section 22. As already seen above, the law on this point is well-settled and considering the same, while the arguments were being heard, on three occasions the learned advocate appearing for the appellants was asked as to whether the appellants would like to withdraw the appeal. On all the three occasions, the learned advocate chose to insist to argue and invite judgment in the matter. Insistence for judgment on the point which is already well-settled by the decision of the apex court is nothing but waste of time of the court. The learned advocate was not able to point out any point as such, nor could distinguish the above referred decisions with reference to the facts of the case in hand. In the circumstances, we are constrained to dismiss this appeal with costs of Rs. 5,000. Order accordingly.